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GEORGE P. PELL, LL.B.

Late a Judge of the Superior Court, Author of Pell's Revisal and Pell's Forms of Pleading and Practice

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RALEIGH
BYNUM PRINTING COMPANY
1923

BANKS AND BANKING

CHAPTER I

CONTROL AND REGULATION

In general. Both State and National banks are supervised by officials of the Government clothed with complete and strict powers, the State banks being supervised by the State Corporation Commission[1] and the National banks by the Comptroller of the Currency.

Supervision of State banks. The Corporation Commission is charged with the execution and enforcement of all laws relating to State banks, and for their more complete and thorough enforcement it is given broad power to promulgate such rules, regulations and instructions as may appear necessary to protect depositors, creditors, stockholders and the public in their relations with such banks.[2] The statute prescribes the kind of banks which are within the Commission's supervisory power as being such corporations, partnerships, firms or individuals as receive, solicit or accept money or its equivalent on deposit as a business, but not building and loan associations, Morris plan companies, industrial banks or trust companies not so receiving money.[3] The law will not allow the chartering of any corporation or the advertising of the same with the word "bank," "banking," "banker" or "trust" in its name except such as come under the supervision of the Corporation Commission.[4]

See page 303.

AUTHORITY FOR ISSUING CHARTER. When a copy of the certificate of incorporation of a proposed State bank is submitted by the Secretary of State to the Corporation Commission it is its duty to examine into all the facts connected with the formation of such proposed corporation, including its location and proposed stockholders, and if it appear that such corporation, if formed, will be lawfully entitled to commence the business of banking, the Corporation Commission must so certify to the Secretary of State, who must thereupon issue and record such certificate of incorporation. But the Corporation Commission may refuse to so certify to the Secretary of State, if upon examination and investigation it has reason to believe that the proposed corporation is formed for any other than legitimate banking business, or that the character, general fitness,

[1] 1921, chap. 4, sec. 63.
[2] 1921, chap. 4, sec. 63.
[3] 1921, chap. 4, sec. 1.
[4] 1921, chap. 4, sec. 81.

and responsibility of the persons proposed as stockholders in such corporation are not such as to command the confidence of the community in which said bank is proposed to be located; or that the public convenience and advantage will not be promoted by its establishment; or that the name of the proposed corporation is likely to mislead the public as to its character or purpose; or if the proposed name is the same as one already adopted or appropriated by an existing bank in this State or so similar thereto as to be likely to mislead the public.[1]

AUTHORITY TO BEGIN BUSINESS. Before any company shall begin the business of banking, banking and trust, fiduciary, or surety business under a State charter, at least fifty per cent of its capital stock must be paid in in cash, and there must be filed with the Corporation Commission a statement under oath by the president or cashier, containing the names of all the directors and officers, with the date of their election or appointment, term of office, residence and post-office address of each, the amount of capital stock of which each is the owner in good faith and the amount of money paid in on account of the capital stock. Nothing can be received in payment of capital stock but money. Upon filing of such statement, the Corporation Commission must examine into its affairs, ascertain especially the amount of money paid in on account of its capital, the name and place of residence of each director, the amount of capital stock of which each is the owner in good faith, and whether such corporation has complied with all the provisions of law required to entitle it to engage in business. If upon such examination it appears to the Corporation Commission that it is lawfully entitled to commence the business of banking, banking and trust, fiduciary, or surety business, it must give to such corporation a certificate signed by the chairman of the Corporation Commission, attested by the secretary of the Commission, that such corporation has complied with all the provisions of the law required to be complied with, before commencing the business of banking, and that such corporation is authorized to commence business.[2]

REPORTS OF CONDITION. Every State bank is required to make to the Corporation Commission not less than three reports during each year, according to the form which may be prescribed by said Commission; which report must be verified by the oath or affirmation of the president, vice-president, cashier, secretary, or treasurer of

[1] 1921, chap. 4, secs. 4, 5; 1921 (extra session) chap. 56, sec. 1.

[2] 1921, chap. 4, secs. 6, 7, and 8.

said bank, and in addition thereto, two of the directors, in the case of incorporated banks, and in other cases by the oath or affirmation of the partners, members of the firm, or individual owner. Each such report must exhibit in detail and under appropriate heads the resources, assets, and liabilities of such bank at the close of business on any past day by the Corporation Commission specified, and show the amount of money on deposit in such bank to the credit of the State or of any official thereof, and must be transmitted to the Corporation Commission within ten days after the receipt of a request or requisition therefor from the Commission, and in a form prescribed by the Corporation Commission. A summary of such report must be published in a newspaper published in the place where the bank is located, or if there is no newspaper in the place, then in the nearest one published thereto in the county in which such bank is established. Proof of such publication must be furnished the Corporation Commission in such form as may be prescribed by it.

Every person, firm, corporation, or partnership doing a banking business, or a banking business in connection with any other business under a State charter, must make to the Corporation Commission not less than three reports during each year, on forms prescribed by the Corporation Commission, which reports must be published as are the reports of other banking institutions. If any person, firm, corporation, or copartnership shows by said reports, or by the examination of any State bank examiner, that such liabilities are equal to the amount of the capital stock of such bank, the Corporation Commission has authority and is empowered to make such rules and regulations for the reduction of said liabilities as it may deem necessary for the protection of the creditors and depositors of such banking institution.

The Corporation Commission may call for special reports whenever in its judgment it is necessary to inform it of the condition of any State bank, or to obtain a full and complete knowledge of its affairs. Said reports shall be in and according to the form prescribed by the Corporation Commission, and must be verified in the manner provided by law, and must be published if required by the Commission so to be.

Every bank failing to make and transmit any report which the Corporation Commission is authorized to require, and in and according to the form prescribed by said Commission, within ten days after the receipt of a request or requisition therefor, or failing to publish the reports as required, must forthwith be notified by the Corpora-

tion Commission, and if such failure continue for five days after the receipt of such notice, such delinquent bank is subject to a penalty of two hundred dollars.[1]

COMMUNICATIONS FROM CORPORATION COMMISSION. The Corporation Commission or any State bank examiner may address communications to any State bank or officer thereof relating to any examination or investigation made of such bank, or containing suggestions or recommendations as to its conduct, and when the writer of such communications requires it, such communications must be submitted to the executive committee or board of directors of such bank and duly noted in the minutes of such meeting. The submission of such communications must be certified to the Corporation Commission by three members of such committee or board.[2]

MANNER OF KEEPING ACCOUNTS. The manner of keeping books, accounts and records of State banks, such as will tend to produce uniformity in the books, accounts and records of banks of the same class, may be prescribed by the Corporation Commission.[3]

EXAMINATIONS. Every State bank is required to be examined as often as the Commission may deem it necessary, at least once a year, by a duly appointed State bank examiner.[4] For the purpose of making such examination the officers of a bank are required to submit and surrender its books, assets, papers and concerns to the examiner, who may retain their possession for such length of time as may be necessary. The examiner may summon any person to appear before him and testify, and may administer an oath thereto. If any officer of a bank refuse to surrender the books, assets, papers, and concerns aforesaid, or shall refuse to be examined under oath touching the affairs of such bank, the examiner may take possession of the property and business of the bank and liquidate its affairs.[5]

EXAMINERS MAY MAKE ARREST. When it shall appear to any examiner, by examination or otherwise, that any officer, agent, employee, director, stockholder, or owner of any State bank has been guilty of a violation of the criminal laws of this State relating to banks, it is his duty to hold and detain such person or persons until a warrant can be procured for his arrest; and for such purposes such examiner has all the powers of peace officers of such county, and may make arrest without warrant for past offenses. Upon report of his action to the Corporation Commission, it may direct the release

[1] 1921, chap. 4, secs. 64-67; 1923, chap. 148, sec. 1; 1923, chap. 211, sec. 1.
[2] 1921, chap. 4, sec. 69.
[3] 1921, chap. 4, sec. 70.
[4] 1921, chap. 4, sec. 72.
[5] 1921, chap. 4, secs. 73, 75.

of the person or persons so held, or, if in its judgment such person or persons should be prosecuted, the Commission must cause the solicitor of the judicial district in which such detention is had to be promptly notified.[1]

REMOVAL OF OFFICERS AND EMPLOYEES. The Corporation Commission may require the immediate removal from office of any officer, director, or employee of any State bank who shall be found to be dishonest, incompetent, or reckless in the management of the affairs of the bank, or who persistently violates the laws of this State or the lawful orders, instructions, and regulations issued by the Corporation Commission.[2]

Limitation on investments. All investments by State banks must be made under such rules and regulations as the board of directors may prescribe. A State bank can invest only in such real estate as is necessary for the convenient transaction of its business, including furniture and fixtures, with its banking offices and other apartments to rent as a source of income, which investment must not exceed fifty per cent of its paid-in capital stock and permanent surplus; also in such as is mortgaged to it in good faith by way of security for loans made or moneys due to such bank; also in such as has been purchased at sales upon foreclosures of mortgages and deeds of trust held or owned by it or on judgments or decrees obtained and rendered for debts due to it, or in settlements affecting security of such debts. All real estate purchased at foreclosure or execution sales must be sold by the bank within one year thereafter, unless, upon application of the board of directors, the Corporation Commission extends the time within which such sale shall be made.[3]

The investment in any bonds or other interest-bearing securities of any one firm, individual or corporation, unless it be the interest-bearing obligations of the United States, State of North Carolina, city, town, township, county, school district, or other political subdivision of the State of North Carolina, by any State bank must at no time be more than twenty-five per cent of the capital and permanent surplus of any bank having a paid-in capital of two hundred and fifty thousand dollars or less; nor more than twenty per cent of the capital and permanent surplus of any bank having a paid-in capital of more than two hundred and fifty thousand dollars but not more than five hundred thousand dollars; nor more than fifteen per cent of the capital and permanent surplus of any bank having

[1] 1921, chap. 4, sec. 76.
[2] 1921, chap. 4, sec. 74.
[3] 1921, chap. 4, secs. 26, 49; 1923, chap. 148, sec. 5.

a paid-in capital of more than five hundred thousand dollars but not more than seven hundred and fifty thousand dollars; nor more than ten per cent of the capital and permanent surplus of any bank having a paid-in capital of more than seven hundred and fifty thousand dollars. But if a corporation owns the land, building or buildings occupied by such bank as its banking home, it may invest in its stocks and bonds to the extent of fifty per cent of its capital and permanent surplus.[1]

No State bank is allowed to invest in the capital stock of any other State or National bank. But it can invest in the capital stock of banks organized under that act of Congress commonly known as the "Edge Act," or central reserve banks having a capital stock of more than one million dollars, upon such terms as may be agreed upon. To constitute a central reserve bank as contemplated by law, at least fifty per cent of the capital stock of such bank must be owned by other banks. The investment of any bank in the capital stock of such central reserve bank or bank organized under that act of Congress commonly known as the "Edge Act" must at no time exceed ten per cent of the paid-in capital and permanent surplus of the bank making same.

No State bank is allowed to invest more than fifty per cent of its permanent surplus in the stocks of other corporations, firms, partnerships, or companies, unless such stock is purchased to protect the bank from loss. Any stocks owned or acquired in excess of the limitations imposed must be disposed of at public or private sale within six months after the date of acquiring same, and, if not so disposed of, they must be charged to profit and loss account and no longer carried on the books as an asset. The Corporation Commission can extend the time of sale and the charging off the books of the bank if, in its judgment, it is for the best interest of the bank.[2]

The board of directors may, by resolution duly passed at a meeting of the board, request the Corporation Commission to temporarily suspend the limitation on investments as same may apply to any particular investment which said bank desires to make in excess of the limitations as above. Upon receipt of a duly certified copy of such resolution, the Corporation Commission may, in its discretion, suspend the limitation as to such investment.[3]

Limitation on loans. The total direct and indirect liabilities of any person, firm or corporation, other than municipal corporations,

[1] 1921, chap. 4, sec. 27.
[2] 1921, chap. 4, sec. 28.
[3] 1921, chap. 4, sec. 30.

for money borrowed of a State bank, including in the liabilities of a firm the liabilities of the several members thereof, shall at no time exceed twenty-five per cent of the capital stock and permanent surplus of any bank having a paid-in capital of two hundred and fifty thousand dollars or less; not more than twenty per cent of the capital and permanent surplus of any bank having a paid-in capital of more than two hundred and fifty thousand dollars but not more than five hundred thousand dollars; not more than fifteen per cent of the capital and permanent surplus of any bank having a paid-in capital of more than five hundred thousand dollars but not more than seven hundred and fifty thousand dollars; and not more than ten per cent of the capital and permanent surplus of any bank having a paid-in capital of more than seven hundred and fifty thousand dollars. The discount of bills of exchange drawn in good faith against actually existing values, the discount of trade acceptances or other commercial or business paper actually owned by the person, firm, or corporation negotiating the same, and the purchase of any notes secured by not less than a like face amount of bonds of the United States or State of North Carolina, or certificates of indebtedness of the United States, are not to be considered as money borrowed within the meaning of the above.[1] The words "commercial paper," also used above, is defined to mean a promissory note. The words "trade acceptances," used above, mean drafts or bills of exchange issued or drawn for agricultural, industrial or commercial purposes, or the proceeds of which have been used or are to be used for such purposes, but not notes, drafts, or bills of exchange covering merely investments, or issued or drawn for the purpose of carrying on or trading in stocks, bonds, or other investment securities, except bonds and notes of the Government of the United States and State of North Carolina. Such notes, drafts, and bills of exchange must have a maturity at the time of discount of not more than ninety days, except when drawn or issued for agricultural purposes, or based on livestock, when such maturities shall not exceed nine months from the date thereof,[2] and must be actually owned by the person, firm or corporation negotiating the same.[3]

The board of directors may, by resolution duly passed at a meeting of the board, request the Corporation Commission to temporarily suspend the limitation on loans as same may apply to any particular loan which said bank desires to make in excess of the limitations as

[1] 1921, chap. 4, sec. 29; 1923, chap. 148, sec. 6.

[2] 1921, chap. 4, sec. 36.

[3] 1923, chap. 148, sec. 6.

above. Upon receipt of a duly certified copy of such resolution, the Corporation Commission may, in its discretion, suspend the limitation as to such loan.[1]

Reserve; depository for, designated. Every State bank must at all times have on hand or on deposit, with approved reserve depositories, instantly available, funds in an amount equal to at least fifteen per cent of the aggregate amount of its demand deposits, and five per cent of the aggregate amount of its time deposits. But no reserve is required on deposits secured by a deposit of United States bonds or the bonds of the State of North Carolina. Any bank that is now or may hereafter become a member of the Federal Reserve Bank must maintain the same reserve with respect to deposits as is required of other members of such Federal Reserve Bank. The reserve shall consist of cash on hand and balances payable on demand, due from other approved solvent banks, which have been designated depositories.[2] It is the duty of the board of directors to designate depositories or reserve banks in which a part of such bank's reserve shall be deposited subject to payment on demand. A copy of the resolution designating such depository must be certified to the Corporation Commission, and the depository so designated is subject to the approval of the Corporation Commission, which approval may be withdrawn at any time for cause which said Commission may deem adequate.[3]

[1]1921, chap. 4, sec. 30.
[2]1921, chap. 4, sec. 31, 32.
[3]1921, chap. 4, sec. 55.

Chapter II

BANKING CORPORATIONS AND ASSOCIATIONS

Incorporation, organization, and incidents of existence. Any number of persons, not less than five, who may be desirous of forming a company under the banking laws of this State and engaging in the business of establishing, maintaining, and operating banks of discount and deposit to be known as commercial banks, or engaging in the business of establishing, maintaining, and operating offices of loan and deposit to be known as savings banks, or of establishing, maintaining, and operating banks having departments for both classes of business, or operating banks engaged in doing a trust, fiduciary, and surety business, shall be incorporated by filing a certificate of incorporation, under their hands and seals, in the office of the Secretary of State, whereupon he must forthwith transmit to the Corporation Commission a copy thereof, which Commission must thereupon examine into all the facts connected with the matter as set forth in the foregoing chapter, paragraph headed "Authority for issuing charters," and refuse or issue its certificate to the Secretary of State that said corporation is entitled to commence the business of banking. If it grants such certificate, then, upon the Secretary of State transmitting a copy of the certificate of the Corporation Commission, and the recording of same in the office of the clerk of the Superior Court of the county wherein is to be located the principal office of the corporation, and upon the filing of a copy of said certificate in the office of the Corporation Commission, the said persons become a body politic and corporate under the name stated in the certificate. The charter, however, is void unless the organization is completed and bank opened for business in six months from date of filing its certificate of incorporation with the Secretary of State, unless the Corporation Commission for cause extends the time for such organization and beginning of business.[1]

Powers and duties; general corporation law applicable. In addition to the powers conferred by law upon private corporations, a State bank is given the power to exercise by its board of directors, or duly authorized officers and agents, subject to law, all such powers as shall be necessary to carry on the business of banking, by discounting and negotiating promissory notes, drafts, bills of exchange, and other evidences of indebtedness, by receiving deposits,

[1] 1921, chap. 4, secs. 2, 4, 5; 1921 (extra session), chap. 56, sec. 1.

by buying and selling exchange, coin, and bullion, by loaning money on personal security or real and personal property, at the time of making loans or discounts, taking and receiving interest or discounts in advance; to adopt regulations for the government of the corporation not inconsistent with the Constitution and laws of this State; to purchase, hold, and convey real estate for the purposes and under the limitations set forth in Chapter I of this monograph.[1] The corporate powers, business, and property of State banks are exercised, conducted, and controlled by boards of directors.[2]

All provisions of law relating to private corporations, and particularly those enumerated in the chapter of the Consolidated Statutes entitled "Corporations," not inconsistent with the State Banking Act or with the business of banking, are applicable to banks.[3]

TRANSACTIONS PRELIMINARY TO BEGINNING BUSINESS. No State banking corporation is allowed to transact any business except such as is incidental and necessarily preliminary to its organization until it has been authorized to do so by the Corporation Commission.[4]

DEFECTIVE ORGANIZATION. The fact that there is a defect in the organization of a bank will not relieve a bank president of his liability cast upon him by constructive notice of the management of its affairs by the cashier and other subordinate officers, if he has contributed the influence of his reputation to give undeserved credit to a spurious corporation.[5]

BRANCHES. Any State bank may establish branches in the city in which it is located, or elsewhere, after having first obtained the written approval of the Corporation Commission, which approval may be given or withheld by the Corporation Commission, in its discretion, and shall not be given until it shall have ascertained to its satisfaction that the public convenience and advantage will be promoted by the opening of such branch. Such branch banks must be operated as branches of and under the name of the parent bank, and under the control and direction of the board of directors and executive officers of said parent bank. The board of directors of the parent bank must elect a cashier and such other officers as may be required to properly conduct the business of such branch, and a board of managers or loan committee must be responsible for the conduct and management of said branch, but not of the parent bank

[1]1921, chap. 4, sec. 26.
[2]1921, chap. 4, sec. 48.
[3]1921, chap. 4, sec. 87.
[4]1921, chap. 4, sec. 9.
[5]Hauser v. Tate, 85-82.

or of any branch save that of which they are officers, managers, or committee. The Corporation Commission is not allowed to authorize the establishment of any branch the paid-in capital stock of whose parent bank is not sufficient in an amount to provide for the capital of at least fifteen thousand dollars for the parent bank, and at least fifteen thousand dollars for each branch which it is proposed to establish in cities or towns of three thousand population or less; nor less than thirty thousand dollars in cities and towns whose population exceeds three thousand but does not exceed ten thousand; nor less than fifty thousand dollars in cities and towns whose population exceeds ten thousand but does not exceed twenty-five thousand; nor less than one hundred thousand dollars in cities and towns whose population exceeds twenty-five thousand.[1] The parent bank stands to such branch bank in the relation of principal to agent, and all assets and debts of the branch bank are assets and debts of the principal bank.[2]

The fact that a bank's charter says that its principal place of business shall be at a certain place does not by implication give it the power to establish branches.[3]

The weight of authority is that a bank and its branches constitute but one corporation.[4]

Consolidation. A State bank may consolidate with or transfer its assets and liabilities to another bank. Before such consolidation or transfer shall become effective, each bank concerned in such consolidation or transfer must file, or cause to be filed, with the Corporation Commission certified copies of all proceedings had by its directors and stockholders, which said stockholders' proceedings must set forth that holders of at least two-thirds of the stock voted in the affirmative on the proposition of consolidation or transfer. Such stockholders' proceedings must also contain a complete copy of the agreement made and entered into between said banks with reference to such consolidation or transfer. Upon the filing of such stockholders' and directors' proceedings as aforesaid, the Corporation Commission must cause to be made an examination of each bank to determine whether the interests of the depositors, creditors, and stockholders of each bank are protected, and that such consolidation or transfer is made for legitimate purposes, and its consent to or rejection of such consolidation or transfer must be based upon such examination. No such consolidation or transfer can be made with-

[1]1921, chap. 4, sec. 43; 1921 (extra session), chap. 56, sec. 2.
[2]Worth v. Bank, 122-397, 29 S. E. 775.
[3]Morehead Banking Co. v. Tate 122-313, 30 S. E. 341.
[4]Worth v. Bank, 122-397, 29 S. E. 775.

out the consent of the Corporation Commission. The expense of such examinations must be paid by such banks. Notice of such consolidation or transfer must be published for four weeks before or after the same is to become effective, at the discretion of the Corporation Commission, in a newspaper published in a city, town, or county in which each of said banks is located, and a certified copy thereof must be filed with the Corporation Commission. In case of either transfer or consolidation the rights of creditors must be preserved unimpaired, and the respective companies deemed to be in existence to preserve such rights for a period of three years.[1]

In case of consolidation, when the agreement of consolidation is made, and a duly certified copy thereof is filed with the Secretary of State, together with a certified copy of the approval of the Corporation Commission to such consolidation, the banks, parties thereto, will be held to be one company, possessed of the rights, privileges, powers, and franchises of the several companies, but subject to all the provisions of law under which it is created. The directors and other officers named in the agreement of consolidation are required to serve until the first annual meeting for election of officers and directors, the date for which must be named in the agreement. On filing such agreement, all and singular, the property and rights of every kind of the several companies are thereby transferred and vested in such new company, and are as fully its property as they were of the companies parties to the agreement.[2]

REORGANIZATION. Whenever any National or State bank is authorized to dissolve, and shall have taken the necessary steps to effect dissolution, it shall be lawful for a majority of the directors of such bank, upon authority in writing of the owners of two-thirds of its capital stock, with the approval of the Corporation Commission, to execute articles of incorporation as provided by law, which articles, in addition to the requirements of law, must further set forth the authority derived from the stockholders of such National bank or State bank, and upon filing the same as provided for the organization of banks, the same becomes a bank under the laws of this State, and thereupon all assets, real and personal, of the dissolved National or State bank by operation of law is vested in and becomes the property of such State bank, subject to all liabilities of such National or State bank not liquidated under the laws of the United States or this State before such reorganization.[3]

[1] 1921, chap. 4, sec. 12.
[2] 1921, chap. 4, sec. 13.
[3] 1921, chap. 4, sec. 14.

Authority to join Federal Reserve System. Any State bank has the power to subscribe to the capital stock and become a member of a Federal Reserve Bank, and upon becoming a member thereof it is vested with all powers conferred upon member banks of the Federal Reserve System by terms of the Federal Reserve Act as fully and completely as if such powers were specifically enumerated and described therein, and such powers must be exercised subject to all restrictions and limitations imposed by the Federal Reserve Act, or by regulations of the Federal Reserve Board made pursuant thereto. The right, however, is expressly reserved to revoke or to amend the powers herein conferred. A compliance on the part of any such bank with the reserve requirements of the Federal Reserve Act is held to be a full compliance with the provisions of the laws of this State which require banks to maintain cash balances in their vaults or with other banks, and no such bank is required to carry or maintain reserve other than such as is required under the terms of the Federal Reserve Act. Any such bank continues to be subject to the supervision and examination required by the laws of this State, except that the Federal Reserve Board has the right, if it deems necessary, to make examinations; and the authorities of this State having supervision over such banks may disclose to the Federal Reserve Board, or to the examiners duly appointed by it, all information in reference to the affairs of any bank which has become, or desires to become, a member of a Federal Reserve Bank.[1]

Capital stock; increase and decrease; penalty for falsely advertising. No State bank can commence business with less capital stock than fifteen thousand dollars in cities or towns of three thousand population or less; nor less than thirty thousand dollars in cities and towns whose population exceeds three thousand but does not exceed ten thousand; nor less than fifty thousand dollars in cities and towns whose population exceeds ten thousand but does not exceed twenty-five thousand; nor less than one hundred thousand dollars in cities and towns having a population of more than twenty-five thousand; the population to be ascertained by the last preceding National census. Such stock must be divided into shares of fifty or one hundred dollars each.[2]

Fifty per cent of the capital stock of every State bank must be paid in cash before it will be authorized to commence business, and the remainder of the capital stock of such bank must be paid in monthly installments of at least ten per cent in cash of the whole

[1]1921, chap. 4, sec. 42.

[2]1921, chap. 4, sec. 2.

capital, payable at the end of each succeeding month from the time it is authorized by the Corporation Commission to commence business, and the payment of each installment must be certified to the Corporation Commission, under oath, by the president or the cashier of the bank. The stock sold by any bank in process of organization, or for an increase of the capital stock, must be accounted for to the bank in the full amount paid for the same. No commission or fee is allowed to be paid to any person, association, or corporation for selling such stock.[1] The Corporation Commission must refuse authority to commence business to any bank if commissions or fees have been paid or have been contracted to be paid by it, or by any one in its behalf, to any person, association, or corporation for securing subscriptions for or selling stock in such bank.

Any State bank may increase or decrease its capital stock in the manner provided for other corporations. But no bank is allowed to reduce its capital stock to an amount less than the minimum required by law. Such reduction is not valid nor will it warrant the cancellation of stock certificates until it has been approved by the Corporation Commission. Such approval must not be given except upon a finding by the Corporation Commission that the security of existing creditors of the corporation will not be impaired.[2]

Should any bank advertise in newspaper, letterhead or any other way a larger capital stock than has been actually paid in in cash, such bank shall be subject to a penalty of five hundred dollars for each and every offense.[3]

IMPAIRMENT OF CAPITAL STOCK; OF STATE BANKS MADE GOOD. As to the impairment of the capital stock of National banks, it is held that the decision of the Comptroller of the Currency is conclusive and final on the stockholders and the courts.[4] As to State banks, the Corporation Commission must notify every bank whose capital shall have become impaired from losses or any other cause and the surplus and undivided profits of such bank are insufficient to make good such impairment, to make the impairment good within sixty days of such notice by an assessment upon the stockholders thereof, and it is the duty of the officers and directors of the bank receiving such notice to immediately call a special meeting of the stockholders for the purpose of making an assessment upon its stockholders sufficient to cover the impairment of the capital, payable

[1]1921, chap. 4, sec. 6.
[2]1921, chap. 4, secs. 10, 11.
[3]1921, chap. 4, sec. 86.
[4]Gurley v. Woodbury, 177-70, 97 S. E. 754.

in cash, at which meeting such assessment must be made. Such bank may reduce its capital to the extent of the impairment, as provided by law.

If any stockholder of such State bank neglects or refuses to pay such assessment as provided, it is the duty of the board of directors to cause a sufficient amount of the capital stock of such stockholder or stockholders to be sold at public auction, upon thirty days notice given by posting such notice of sale in the office of the bank and publishing such notice in a newspaper in the place where the bank is located, and, if none, then in a newspaper circulating in the county in which the bank is located, to make good the deficiency, and the balance, if any, shall be returned to the delinquent shareholder or shareholders. If any such bank shall fail to cause to be paid in such deficiency in its capital stock for three months after receiving such notice from the Corporation Commission, the Corporation Commission may forthwith take possession of the property and business of such bank until its affairs be finally liquidated as provided by law. A sale of stock as provided effects an absolute cancellation of the outstanding certificate, or certificates, evidencing the stock so sold, and makes the certificate null and void, and a new certificate must be issued by the bank to the purchaser of such stock.[1]

STOCKHOLDERS' BOOK. The directors must provide a book in which must be kept the name and resident address of each stockholder, the number of shares held by each, the time when such person became a stockholder, together with all transfers of stock, stating the time when made, the number of shares and by whom transferred, which book must be subject to the inspection of the directors, officers, and stockholders of the bank at all times during the usual hours for the transaction of business.[2]

Undivided profits; surplus; dividends. The term "undivided profits" means the credit balance of the profit and loss account of any bank. The term "net earnings" means the excess of the gross earnings of any bank over expenses and losses chargeable against such earnings during any dividend period. The term "surplus" means a fund created pursuant to the provisions of the State Banking Act by a bank from its net earnings or undivided profits, which, to the amount specified and any additions thereto set apart and designated as such, is not available for the payment of dividends, and cannot be used for the payment of expenses or losses so long as

[1]1921 (extra session), chap. 56, sec. 3. [2]1921, chap. 4, sec. 56.

such bank has undivided profits.[1] The primary purpose of a surplus is the accumulation of a sum against which bad debts may be charged, so that at all times the capital may be kept unimpaired.[2]

The board of directors of any State bank may declare a dividend of so much of its undivided profits as they may deem expedient, subject to the requirements of law. Before such dividend is declared, not less than twenty-five per cent of the undivided profits of any bank, having a capital stock of fifteen thousand dollars or more, must be carried to the surplus of such bank until its surplus amounts to fifty per cent of its paid-in capital stock; and not less than fifty per cent of the undivided profits of any bank having a capital stock of less than fifteen thousand dollars must be carried to the surplus of such bank until its surplus amounts to one hundred per cent of its paid-in capital stock. In order to ascertain the undivided profits from which such dividend may be made, there shall be charged and deducted from the actual profits:

(*a*) All ordinary and extraordinary expenses, paid or incurred, in managing the affairs and transacting the business of the bank;

(*b*) Interest paid or then due on debts which it owes;

(*c*) All taxes due;

(*d*) All overdrafts which have been standing on the books of the bank for a period of sixty days or longer;

(*e*) All losses sustained by the bank. In computing the losses, debts owing to it which have become due and which are not in process of collection, and on which interest for one year or more is due and unpaid, unless same are well secured, and debts upon which final judgment has been recovered, but has been for more than one year unsatisfied, and on which also for a period of one year no interest has been paid, unless same are well secured, shall be included.[3]

The surplus of any State bank must not be used for the purpose of paying expenses or losses until the credit to undivided profits has been exhausted. But any portion of such surplus may be converted into capital stock and distributed as a stock dividend, provided that such surplus shall not thereby be reduced below fifty per cent of the paid-in capital of such bank having a paid-in capital of fifteen thousand dollars or more. When the surplus of any bank having a capital stock of less than fifteen thousand dollars shall reach an amount equal to one hundred per cent of its paid-in capital, the board of directors of such bank must declare a dividend of fifty per cent of

[1] 1921, chap. 4, sec. 1.
[2] Pullen v. Corp. Commission, 152-548, 68 S. E. 155.
[3] 1921, chap. 4, sec. 58.

said surplus and distribute the same as a stock dividend. Where the distribution of such a stock dividend would increase the capital stock of any bank to an amount greater than fifteen thousand dollars, the board of directors of such bank may, in its discretion, declare a stock dividend of only so much of said surplus as will be necessary to increase the stock of the said bank to fifteen thousand dollars.[1]

Lien of bank on stock or dividends. Where a bank charter provides that the bank shall have a lien on the shares of its stockholders to secure any indebtedness by them to the bank, the lien only extends to the indebtedness directly incurred to the bank, not to indebtedness to third persons acquired by it. The lien is not extended to notes of a shareholder to a third person, taken by the bank as collateral from such person, merely by the fact that the stockholder was then president of the bank. The failure of a bank having a provision for such a lien in its charter to organize within two years after it is chartered, which failure the law provides shall forfeit its charter, cannot be urged against the validity of a lien by the bank on shares of a stockholder, but the objection can only be raised by the State in a direct proceeding.[2]

STOCK SOLD IF SUBSCRIPTION UNPAID. Whenever any stockholder of a State bank, or his assignee, fails to pay any installment on the stock when the same is required by law to be paid, the directors of the bank must sell the stock of such delinquent stockholder at public or private sale, as they may deem best, having first given the delinquent stockholder twenty days notice, personally or by mail, at his last known address. If no party can be found who will pay for such stock the amount due thereon to the bank, the amount previously paid is forfeited to the bank, and such stock must be sold, as the directors may order, within thirty days of the time of such forfeiture, and if not sold, it must be canceled and deducted from the capital stock of the bank.[3]

Stockholders. WHO ARE, AND RECORD OF. The term "stockholders," when used in the State Banking Act, applies not only to such persons as appear by the books of the corporation to be stockholders, but also to every owner of stock, legal or equitable, although the same may be on such books in the name of another person; but does not apply to a person who may hold the stock as collateral for the payment of a debt.[4] Every State bank must at all times keep a

[1]1921, chap. 4, sec. 59.
[2]Boyd v. Redd, 120-335, 27 S. E. 35.
[3]1921, chap. 4, sec. 25.
[4]1921, chap. 4, sec. 21.

correct record of the names of all its stockholders, and once in each year, or whenever called upon, file in the office of the Corporation Commission a correct list of all its stockholders, the resident address of each, and the number of shares held by each.[1]

RIGHTS OF STOCKHOLDERS. A majority of stockholders of a National bank, who enter into an illegal voting trust agreement, may not divert the funds of the bank for the payment of the expenses of preparing the agreement and of defending an action involving its validity.[2]

As a creditor, a stockholder is entitled only to a dividend in proportion to other creditors. His liability as a contributor for the benefit of creditors must be distinguished from his character as a simple contract debtor to the bank upon ordinary business transactions. The money arising from unpaid shares is a trust fund for all the creditors and cannot be affected by any individual transactions of the stockholder to the prejudice of the other stockholders.[3]

LIABILITY FOR DEBTS AND ACTS OF BANK; TRANSFERRER OF STOCK. The stockholders of every bank, notwithstanding exemptions contained in the charter, are individually responsible, equally and ratably, and not one for another, for all contracts, debts, and engagements of such corporation, to the extent of the amount of their stocks therein at par value thereof, in addition to the amount invested in such shares. The term "stockholders," when used in the State Banking Act, applies not only to such persons as appear by the books of the corporation to be stockholders, but also to every owner of stock, legal or equitable, although the same may be on such books in the name of another person; but shall not apply to a person who may hold the stock as collateral for the payment of a debt.[4]

This double liability of stockholders is in derogation of the common law, and the statute imposing it must be strictly construed.[5] It is imposed for the benefit of creditors and attaches by virtue of the statute to the owners of the stock, and the receiver of an insolvent bank can enforce it whenever it appears that the other assets of the bank will be insufficient, and he need not wait until other assets are completely exhausted, though he must first resort to the unpaid subscriptions on stock. It is intended as a trust for the security of creditors, and such liability cannot, as against creditors or other

[1]1921, chap. 4, sec. 68.
[2]Bank v. Holderness, 160-474, 76 S. E. 624.
[3]First Nat. Bank v. Riggins, 124-534, 32 S. E. 801.
[4]1921, chap. 4, secs. 21, 22.
[5]Smathers v. Bank, 135-410, 47 S. E. 893.

stockholders, be released by the corporation.[1] The statute runs against the right to enforce the double liability from the time of the suspension of specie payment by the bank.[2]

Persons holding stock as executors, administrators, guardians, or trustees are not personally subject to any liabilities as stockholders, but the estate and funds in their hands are liable in like manner and to the same extent as the testator, intestate, ward, or person interested in such trust fund would be if living and competent to hold stock in his own name.[3] If, however, the fiduciary or trustee at a stockholders' meeting agrees to become liable for a specific amount, this is an individual liability of the fiduciary or trustee and not of the estate.[4]

No person who has, in good faith and without intent to evade his liability as a stockholder, transferred his stock in a State bank on the books of the corporation to any person of full age, previous to any default in the payment of any debt or liability of the corporation, is subject to any personal liability on account of the nonpayment of such debt or liability of the corporation, but the transferee of any stock so transferred previous to any default is liable for any such debt or liability of the corporation, to the extent of such stock, in the same manner as if he had been such owner at the time the corporation contracted such debt or liability. No transfer of the shares of stock of an insolvent State bank, made within sixty days prior to its suspension, operates to release or discharge the assignor thereof, but is prima facie evidence that such stockholder assigned the same with knowledge of the insolvency of such bank and with an intent to evade the liability thereon.[5]

INDIVIDUAL LIABILITY AS AN ASSET. The individual liability created by statute of the shareholders in a bank, beyond the amount of the stock for which they have subscribed, is an asset of the corporation available only to the creditors and depositors of the bank; and where the directors of a bank have assumed obligation on certain of its worthless paper to so relieve the bank that it may continue in business with permission of the Corporation Commission, but upon condition that the bank's assets be found insufficient to pay its liabilities, they may not successfully assert that the individual liability of the stockholders was included within the meaning of the word "assets" so used by them. A receiver is not required to collect

[1]Smathers v. Western Carolina Bank, 155-283, 71 S. E. 345.
[2]Long v. Bank, 90-405.
[3]1921, chap. 4, sec. 23; Smathers v. Western Carolina Bank, 155-283, 71 S. E. 345.
[4]Bank v. Cocke, 127-467, 37 S. E. 507.
[5]1921, chap. 4, sec. 24.

in all the bank's assets before collecting the obligation assumed by the directors when it then appears that the bank's creditors would not be paid in full.[1]

Officers and agents. DIRECTORS. Every director of a State bank chosen after the eighteenth of February, one thousand nine hundred and twenty-one, must be the owner and holder of shares of stock in the bank having a par value of not less than five hundred dollars, if such bank shall have a capital stock of more than fifteen thousand dollars, and not less than two hundred dollars if such bank shall have a capital stock of fifteen thousand dollars or less. And every such director must hold such shares in his own name, unpledged and unencumbered in any way. The office of any director at any time holding less stock than above required shall immediately become vacant, and the remaining directors must declare his office vacant and proceed to fill such vacancy forthwith. Not less than three-fourths of the directors of every State bank must be residents of the State of North Carolina.[2] Each director must, within thirty days after his election, take and subscribe, in duplicate, an oath that he will diligently and honestly perform his duties in such office and that he is the owner in good faith of the shares of stock of the bank required to qualify him for such office, standing in his own name on its books.[3]

COMMITTEES OF DIRECTORS. The board of directors of a State bank must appoint an executive committee or committees, each of which shall be composed of at least three of its members, with such duties and powers as are defined by the regulations or by-laws, who shall serve until their successors are appointed. Such executive committee or committees must meet as often as the board of directors may require, which shall not be less frequently than once each month, and approve or disapprove all loans and investments.[4]

A committee of at least three directors or stockholders of each State bank must be appointed annually to examine or to superintend the examination of the assets and the liabilities of the bank, and to report to the board of directors the result of such examination. The committee, with the approval of the board of directors, may provide for such examination by a certified public accountant or clearing-house examiner in any city where such examination is provided for by the rules of such clearing-house association. A copy of such

[1]Hill v. Smathers, 173-642, 92 S. E. 607.
[2]1921, chap. 4, sec. 51.
[3]1921, chap. 4, sec. 52.
[4]1921, chap. 4, sec. 49.

report of examination, required to be made, attested, and verified under oath by the signature of at least three members of such committee, must forthwith be filed with the Corporation Commission.[1]

Officers and employees give bond. The active officers and employees of any State bank, before entering upon their duties, must give bond to the bank in a bonding company authorized to do business in North Carolina, in the amount to be required by the directors, in such form as may be prescribed or approved by the Corporation Commission. The Corporation Commission, or directors of such bank, may require an increase of the amount of such bond whenever they may deem it necessary. If injured by the breach of any bond given, the bank so injured may put the same in suit and recover such damages as it may have sustained.[2]

Liability of directors as to bank and stockholders. The relation of a director to the depositors and creditors of a bank is that of a trustee to his *cestui que trust*.[3] Any director of any State bank who shall knowingly violate, or who shall knowingly permit to be violated by any officers, agents or employees of such bank, any of the provisions of the State Banking Act, is liable personally and individually for all damages which the bank, its stockholders or any other person shall have sustained in consequence of such violation.[4] Directors, however, of State or National banks are not insurers of the fidelity of the officers or agents whom they appoint, nor are they responsible for losses caused by the wrongful acts of such officers or agents, unless there was gross negligence in making such appointment or a lack of proper supervision.[5] While directors are bound to exercise ordinary skill and are liable for losses resulting from mismanagement of the affairs and business of the bank, they are not liable for excusable mistakes concerning the law, and for errors of judgment, either as to the law or the management, when acting in good faith, though good faith will not excuse them when there is lack of the proper care, attention and circumspection in the affairs of the corporation which is exacted of them as trustees. They must manage the affairs and business of the bank according to the charter and by-laws, and use ordinary diligence to supervise the conduct of their office and to understand the condition of the bank, and if they do not, and loss ensues, they are liable for all losses their misconduct

[1]1921, chap. 4, sec. 54.
[2]1921, chap. 4, sec. 61; 1921 (extra session), chap. 18, sec. 1.
[3]Solomon v. Bates, 118-311, 24 S. E. 478.
[4]1921, chap. 4, sec. 53.
[5]Solomon v. Bates, 118-311, 24 S. E. 478.

may inflict, either upon stockholders or creditors. What constitutes "ordinary diligence" must be determined in view of all the circumstances.[1]

If the directors shall give authority for the publication of a false statement of the bank's condition when they know of its falsity, or with reasonable care might have known it, they are personally liable.[2] It is not necessary that they should know it, or might have known it, to be such. It is their duty to know it to be true, and they are liable for damages sustained by any one dealing with the corporation, relying upon the truth of such report.[3] And the fact that a director is, by a private arrangement, excused from giving attention to the publication of the statements on account of being a nonresident of the town wherein the bank is located does not relieve him of his liability.[4] Directors are trustees for depositors and can be held liable for injuries resulting from gross negligence on their part in allowing the bank to be held out to the public as solvent when it is in fact insolvent.[5]

Directors who by false and fraudulent statements to the State Treasurer as to the condition of the bank, in order to conceal its insolvency, induce him not only to make new deposits of the State's money, but also to permit a portion of the money deposited by his predecessor in office to remain, are liable to such Treasurer for any loss either of the old or new deposits.[6] Where a depositor, on going to withdraw his deposit, is told by the vice-president and director that "the bank has plenty of money," etc., and is thereby induced to allow his deposit to remain when the bank was in fact insolvent, it is held that such vice-president and director is personally liable to the depositor for the money lost by the failure of the bank.[7]

Directors are liable if they declare dividends out of the capital stock or deposits of a bank and not out of earnings.[8]

LIABILITY OF PRESIDENT AND VICE-PRESIDENT. The liability of the president and vice-president to depositors and other creditors for losses sustained by them in dealing with the corporation on the

[1]Solomon v. Bates, 118-311, 318, 24 S. E. 478; Caldwell v. Bates, 118-323, 24 S. E. 481.

[2]Townsend v. Williams, 117-330, 23 S. E. 461; Solomon v. Bates, 118-311, 24 S. E. 478; Houston v. Thornton, 122-365, 29 S. E. 827.

[3]Houston v. Thornton, 122-365, 29 S. E. 827. See Townsend v. Williams, 117-330, 23 S. E. 461; Hauser v. Tate, 85-82; Caldwell v. Bates, 118-323, 24 S. E. 481.

[4]Houston v. Thornton, 122-365, 29 S. E. 827; Hauser v. Tate, 85-82; Solomon v. Bates, 118-311, 24 S. E. 478.

[5]Solomon v. Bates, 118-311, 318, 24 S. E. 478; Houston v. Thornton, 122-365, 29 S. E. 827.

[6]Tate v. Bates, 118-287, 24 S. E. 482.

[7]Townsend v. Williams, 117-330, 23 S. E. 461.

[8]Solomon v. Bates, 118-311, 24 S. E. 478.

faith of misrepresentations by such officers as to its financial condition or other facts forming a material inducement to the deposit or contract is the same as that of directors.[1]

CASHIER'S UNAUTHORIZED ACT. A cashier has no authority to agree to deposit the bank's funds to the credit of a depositor in payment of his individual debt, this being in effect an unauthorized promise to loan such amount from the bank's funds without note, security or payment of interest.[2]

LIABILITY OF OFFICERS PAYING OVERDRAFTS. Any officer (other than a director) or employee of a State bank who permits any customer or other person to overdraw his account, or who pays any check or draft, the paying of which shall overdraw any account, unless the same shall be authorized by the board of directors or by a committee of such board authorized to act, is personally and individually liable to such bank for the amount of such overdrafts.[3]

EMBEZZLEMENT; FALSE CERTIFICATION; INSOLVENT, RECEIVING DEPOSITS, ETC. Whoever, being an officer, employee, agent, or director of a State bank, embezzles, abstracts, or wilfully misapplies any of the money, funds, credit, or property of such bank, whether owned by it or held in trust, or wilfully and fraudulently issues or puts forth a certificate of deposit, draws an order or bill of exchange, makes an acceptance, assigns a note, bond, draft, bill of exchange, mortgage, judgment, or decree, or makes a false statement or certificate as to a trust deposit or contract, for or under which such bank is acting as trustee, or makes a false entry in or conceals the true and correct entry in a book, report, or statement of such bank, or who shall loan the funds or credit of any bank to any company or corporation known to be insolvent, or which has ceased to exist, or to any person upon the collateral security of any stocks or bonds of such company or corporation which is known to be insolvent, or which has ceased to exist, or which never had any existence, or fictitiously borrows or solicits, obtains or receives money for a bank not in good faith, intended to become the property of such bank, with intent to defraud or injure the bank or another person or corporation, or to deceive an officer of the bank or an agent appointed to examine the affairs of such bank, or publishes a false report relating to the financial condition of the bank, with the intent to conceal its

[1]Solomon v. Bates, 118-311, 319, 24 S. E. 478; Caldwell v. Bates, 118-323, 24 S. E. 481.

[2]Bank v. West, 184-220, 114 S. E. 178.

[3]1921, chap. 4, sec. 60.

true financial condition, or to defraud or injure it or another person or corporation, is guilty of a felony, and upon conviction thereof can be fined not more than ten thousand dollars or imprisoned in the State's Prison not more than thirty years, or both.[1]

Whoever, being an officer, employee, agent, or director of a State bank, certifies a check drawn on such bank, and wilfully fails to forthwith charge the amount thereof against the account of the drawer thereof, or wilfully certifies a check drawn on such bank, unless the drawer of such check has on deposit with the bank an amount of money subject to the payment of such check and equivalent to the amount therein specified, is guilty of a felony, and upon conviction can be fined not more than five thousand dollars or imprisoned in the State's Prison for not more than five years, or both.[2]

Any person, being an officer or employee of a State bank, who receives, or being an officer thereof, permits an employee to receive money, checks, drafts, or other property as a deposit therein when he has knowledge that such bank is insolvent, is guilty of a felony, and upon conviction thereof can be fined not more than five thousand dollars or imprisoned in the State's Prison not more than five years, or both.[3]

Any officer or employee committing any offense against the banking laws of the State other than those herein mentioned is guilty of a misdemeanor and is punishable at the discretion of the court.[4]

DIRECTORS AND OFFICERS ACCEPTING FEES. No gift, fee, permission or brokerage charge is allowed to be received, directly or indirectly, by any officer, director, or employee of any State bank on account of any transaction to which the bank is a party. Any officer, director, employee, or agent who receives any such is guilty of a misdemeanor, and thereafter remains ineligible as an officer, director, or employee of any State bank. This does not prevent the payment of necessary and proper attorney's fees to any licensed attorney for professional services rendered.[5]

Insolvency and dissolution. INSOLVENCY DEFINED. The term "insolvency," as applied to State banks, means: (*a*) when a bank cannot meet its deposit liabilities as they become due in the regular course of business; (*b*) when the actual cash market value of its assets is insufficient to pay its liabilities to depositors and other creditors; (*c*) when its reserve shall fall under the amount required by

[1]1921, chap. 4, sec. 83.
[2]1921, chap. 4, sec. 84.
[3]1921, chap. 4, sec. 85.
[4]1921 (extra session), chap. 56, sec. 4.
[5]1921, chap. 4, sec. 57.

the State Banking Act, and it shall fail to make good such reserve within thirty days after being required to do so by the Corporation Commission.[1]

Voluntary liquidation. A State bank may go into voluntary liquidation and be closed, and may surrender its charter and franchise as a corporation of this State by the affirmative vote of its stockholders owning two-thirds of its stock, such vote to be taken at a meeting of the stockholders duly called by resolution of the board of directors, written notice of which, stating the purpose of the meeting, must be mailed to each stockholder, or, in case of his death, to his legal representative or heirs at law, addressed to his last known residence ten days previous to the date of said meeting. Whenever stockholders shall by such vote, at a meeting regularly called for the purpose, notice of which must be given, decide to liquidate such bank, a certified copy of all proceedings of the meeting at which said action shall have been taken, verified by the oath of the president and cashier, must be transmitted to the Corporation Commission for its approval. If the Corporation Commission approves the same, it must issue to the said bank, under its seal, a permit for such purpose. No such permit must be issued by the Corporation Commission until said Commission shall be satisfied that provision has been made by such bank to satisfy and pay off all depositors and all creditors of such bank. If not so satisfied, the Corporation Commission must refuse to issue a permit, and is authorized to take possession of said bank and its assets and business, and hold the same and liquidate said bank in the manner provided by law. When the Corporation Commission approves the voluntary liquidation of a bank, the directors of said bank must cause to be published in a newspaper in the city, town, or county in which such bank is located, a notice that the bank is closing up its affairs and going into liquidation, and notify its depositors and creditors to present their claims for payment. When any bank shall be in process of voluntary liquidation, it is subject to examination by the Corporation Commission, and must furnish such reports from time to time as may be called for by the Corporation Commission. All unclaimed deposits and dividends remaining in the hands of such bank shall be subject to the provisions of the State Banking Act.[2]

Corporation Commission may take charge, when. The Corporation Commission may take possession of the business and property of any State bank whenever it shall appear that such bank has

[1]1921, chap. 4, sec. 1.

[2]1921, chap. 4, sec. 15.

violated its charter or any laws applicable; is conducting its business in an unauthorized or unsafe manner; is in an unsafe or unsound condition to transact its business; has an impairment of its capital stock; has refused to pay its depositors in accordance with the terms on which such deposits were received; has become otherwise insolvent; has neglected or refused to comply with the terms of a duly issued lawful order of the Corporation Commission; has refused, upon proper demand, to submit its records, affairs, and concerns for inspection and examination to a duly appointed or authorized examiner of the Corporation Commission; its officers have refused to be examined upon oath regarding its affairs. Such banks may, with the consent of the Corporation Commission, resume business upon such terms and conditions as may be approved by it.[1]

ENFORCING OF DISSOLUTION BY COMMISSION OR CREDITOR; RECEIVERSHIP. If any State bank neglect or refuse for a period of sixty days to make a report to the Corporation Commission, as it may demand, or fail, neglect or refuse to comply with the provisions of the next preceding paragraph, or if at any time the Corporation Commission find a bank, or other institution subject to its supervision, in an insolvent condition, or if such institution neglect or refuse to correct any irregularities through violation of the State Banking Act, which may be called to the attention of the president, cashier, or board of directors, the Corporation Commission has authority to take charge of such institution, and if upon investigation it appears to be to the interest of creditors, depositors, and stockholders that a receiver should be appointed, it may apply to the court for the appointment of a competent person as receiver.[2]

The power of the Corporation Commission to ask for a receiver does not preclude a creditor from also exercising the right he has always had to ask for one.[3]

POWERS AND DUTIES OF RECEIVERS GENERALLY. Any receiver appointed, before entering upon his duties, must execute a good and sufficient bond in some bonding company authorized to do business in North Carolina, which bond must be approved by the court. Such receiver, under the direction of the court, must take possession of the books, moneys, records, and assets of every description of such institution, and collect all debts, dues and claims belonging to it, foreclose all mortgages, deeds of trust and other liens executed to the bank, and upon order of the court may sell or compound all bad

[1] 1921, chap. 4, sec. 16.
[2] 1921, chap. 4, sec. 17.
[3] Worth v. Piedmont Bank, 1921-343, 28 S. E. 488.

or doubtful debts, and on like orders may sell all real and personal properties belonging to such bank, and upon such terms as the court may approve or direct, and, if necessary to pay its debts, the receiver may enforce the individual liabilities of its stockholders. A suit for such purpose may be instituted against resident stockholders in the name of such receiver in the Superior Court of the county in which its banking office or home is located, and as to nonresident stockholders, the suit may be brought in any county of the State where such stockholder resides, or where service of process may be had on such stockholder. After payment of all expenses and all claims, the remainder of the proceeds, if any, must be paid to the stockholders of such bank, or their legal representatives, in proportion to the stock respectively held by them. Any bank which is being operated or liquidated under any receivership provided in the State Banking Act shall remain subject to examination and supervision by the Corporation Commission.[1]

Where there are two or more coreceivers, a majority of them has power to act.[2] If there are any actions pending at the time of the appointment of a receiver in which the bank is plaintiff, the receiver shall, upon application by him, be substituted in place of the bank. In fact, the receiver can do all acts which might be done by the bank, if in being, that are necessary for the final settlement of its unfinished business.[3] Dividends and unclaimed deposits remaining in the hands of the receiver for a period of six months after the order for final distribution by the court must be deposited with the State Treasurer, who shall hold such funds as custodian without the payment of interest, subject to the order of the court appointing the receiver, and without the necessity of appropriation by the General Assembly. Any person entitled to all or any part of such unclaimed dividends or deposits may apply to the court of the county in which the insolvent bank was located, or had its principal office, for an order directing the State Treasurer to pay such dividends or unclaimed deposits. Upon satisfactory proof of such claim, it shall be the duty of the court to issue such an order upon the State Treasurer, directing the payment of said dividend or unclaimed deposit, and the State Treasurer is authorized, empowered, and directed to pay out such moneys, without interest, as stated in the order of the court authorized to issue such orders.[4]

[1]C. S., 1209; 1921, chap. 4, sec. 17.
[2]C. S., sec. 1208.
[3]C. S., sec. 1209.
[4]1921, chap. 4, sec. 18.

GENERAL LAW APPLICABLE TO RECEIVERS. Article ten of chapter twenty-two of the Consolidated Statutes, relating to receivers, when not inconsistent with the provisions of the banking act of one thousand nine hundred and twenty-one, applies to receivers of banks.[1]

DEPOSIT OF BOOKS OF DEFUNCT BANK. All books, papers, and records of a bank which has been finally liquidated must be deposited by the receiver in the office of the clerk of the Superior Court for the county in which the office of such bank is located, or in such other place as in his judgment will provide for the proper safekeeping and protection of such books, papers, and records. The books, papers, and records referred to shall be held subject to the orders of the Corporation Commission and the clerk of the Superior Court for the county in which such bank was located.[2]

EFFECT OF DISSOLUTION. When a State bank is dissolved by expiration of its charter all debts due the bank are extinguished, and therefore when a note has been given to the cashier as trustee for the bank, although the legal title is in him, equity will restrain its enforcement after the bank has ceased to exist.[3]

TRANSFERS AFFECTED BY INSOLVENCY. Where a bank has deposited collateral with another bank, from which it secures funds, to secure the payment of certain past debts and any other indebtedness it might owe the lending bank, upon insolvency of the borrowing bank the lending bank can recover for such indebtedness afterward accruing, notwithstanding the cashier and manager of the borrowing bank was the president of the lending bank and at the time of depositing the securities knew that the bank was insolvent.[4]

WHO ARE DEBTORS AND CREDITORS. By "debtors to the bank" are meant all those who, at the appointment of the receiver, were liable to the bank for the payment of money (whether their liability had matured or not), and without any regard to the exact nature of the liability (whether as principal or surety). The word "debtor" does not include those who become indebted to the receiver, for the same reason that a person who has become indebted to an administrator of an insolvent estate is not considered a debtor to the intestate, and allowed to set up against that debt a debt due from the deceased to him. He owes the administrator while the estate owes him.[5] Nor

[1]1921, chap. 4, sec. 19; 1923, chap. 148, sec. 4.
[2]1921, chap. 4, sec. 20.
[3]Fox v. Horah, 36-358.
[4]Corp. Com. v. Bank. 164-205, 80 S. E. 152; Norfleet v. Pamlico Ins., etc., Co., 160-327, 330, 75 S. E. 937.
[5]Davis v. Industrial Mfg. Co., 114-321, 19 S. E. 371; Pate v. Oliver, 104-458, 10 S. E. 709; Rountree v. Britt, 94-104; Mauney v. Ingram, 78-96.

is it intended to include stockholders or officers of the corporation against whom the receiver may be directed to bring actions to recover sums due for subscription for stock or other like claims. In all matters pertaining to set-off, such indebtedness or liability as that last named is considered as due strictly to the receiver, and not to the corporation. By "creditors of the bank" are meant those to whom the bank was indebted at the date of the appointment of the receiver, whether the debts were then due or not.[1]

Rights of set-off. Persons holding the circulating notes of a bank at the time it becomes insolvent may set the same off against their indebtedness to the bank.[2] So also may one to whom the bank is indebted for services before it closed its doors set off his claim against a liability on bills discounted.[3] But a stockholder cannot set off his distributive share in the assets against his liability on his stock.[4]

Presentation and proof of claims; claims with collateral. All claims must be presented to the receiver within the time prescribed and be proven to his satisfaction or adjudicated in a court of competent jurisdiction.[5] A creditor who has no information of the limitation of time in which claims are to be proven, and who is not guilty of laches in presenting his claim, is entitled to prove after the day named.[6] But if he fail to make application to do so until after the fund is distributed, having full knowledge of the proceedings, he will be barred of his right.[7] A depositor in a bank who recovers a judgment, which is satisfied, against one who held himself out as its president, cannot afterwards prove his debt against the bank's assets.[8]

Payment of claims; claims with collateral. All expenses on account of any receivership and all wages or salaries due officers or employees must be paid out of the assets of the bank before distribution of the proceeds thereof; and the receiver may, on order of the court, make a ratable dividend of the money in his hands on all such claims as may have been proved, and as the proceeds of the assets of such bank are paid to the receiver, he must on like orders make any further dividends upon all claims previously proved or adjudicated.[9] In the case of a bank having a branch, the creditors

[1]Davis v. Industrial Mfg. Co., 114-321, 19 S. E. 371.
[2]Mann v. Blount, 65-99; Blount v. Windley, 68-1.
[3]Davis v. Industrial Mfg. Co., 114-321, 19 S. E. 371.
[4]Bank v. Riggins, 124-534, 32 S. E. 801.
[5]1921, chap. 4, sec. 17.
[6]Glenn v. Farmers Bank, 80-97; Green v. R. R. Co., 73-524; Wordsworth v. Davis, 75-159.
[7]Glenn v. Farmers Bank, 80-97.
[8]Dobson v. Simonton, 95-312.
[9]1921, chap. 4, sec. 17.

of the principal bank are entitled to have its property of every description applied ratably to the payment of their claims, and no estoppel, if there could be one from dealings with its branch bank, could affect the creditors of the principal bank.[1]

The courts declare that equity and justice require that the receiver, when he comes to make a settlement with one who is a creditor of the bank, shall deduct from his credit all those sums for which he is debtor, and when he settles with a debtor to the bank he shall allow him credit for all sums for which he is a creditor of the bank.[2]

Where a claim is secured by collateral, the creditor is entitled to share pro rata in the distribution of the funds of the full amount of the debt as it existed at the time of the declaration of insolvency, without crediting either his collaterals or collections made therefrom after such declaration, subject always to the proviso that dividends must cease when from them and from collaterals realized the claim has been paid in full.[3]

[1]Worth v. Bank, 122-397, 29 S. E. 775.
[2]Davis v. Industrial Mfg. Co., 114-321, 19 S. E. 371.

[3]Bank v. Flippen, 158-334, 74 S. E. 100, approving Merrill v. Bank, 173 U. S. 131, which see; Milling Co. v. Stephenson, 161-510, 77 S. E. 676; Winston v. Biggs, 117-206, 23 S. E. 316; Brown v. Bank, 79-244.

Chapter III

FUNCTIONS AND DEALINGS

Exercise of banking powers. The powers of a bank are limited to those granted to it in its charter. The purchase by a bank of a draft drawn to the maker's order and endorsed by another is not foreign to the purposes of its charter authorizing it to accept bills, notes, and other negotiable paper, conceding it not to be within the powers expressly conferred, and the bank is liable thereon to its innocent purchaser for value. A defense of *ultra vires,* where the draft is sold to an innocent party for value and the bank has retained the purchase-money without offer to restore it, is untenable, there being nothing in the transaction that is either illegal or against public policy.[1] So also is the defense of *ultra vires* untenable when a National bank consolidates several debts into one and a new note is given and a mortgage on real estate executed to secure it. Even if taking a mortgage on real estate by a National bank were *ultra vires,* the mortgage would not be void, but only an offense against the United States, of which the mortgagor could not avail himself to defeat his own deed.[2]

Exercise outside of banking hours. Nothing in any law of this State in any manner whatsoever affects the validity of, or renders void or voidable, the payment, certification, or acceptance of a check or other negotiable instrument or any other transaction by a bank in this State, because done or performed during any time other than regular banking hours. No bank in this State, which by law or custom is entitled to close at twelve noon on any Saturday, or for the whole or part day of any legal holiday, is compelled to keep open for the transaction of business, or to perform any of the acts or transactions aforesaid, after such hour on any Saturday or on any legal holiday, except at its option.[3]

Rules of bank. Where prior to a certain date one was a regular customer of a bank, and after such date continued as a regular customer, and at such date a new usage and custom with its customers in regard to their deposits was adopted, such usage and custom cannot affect the rights of the customer in question unless it can be shown that he had notice of the change in the ordinary usage and custom of the bank as to general deposits.[4]

[1]Sherrill v. Trust Co., 176-591, 97 S. E. 471.
[2]Oldham v. Bank, 85-241.
[3]1921, chap. 4, sec. 35.
[4]Boyden v. Bank, 65-13.

Representation of bank by officers or agents. DEPOSITS. In the absence of special authority from the directors, the president cannot authorize the cashier to pay the checks of a person who holds a claim against the president, but who has no deposit in the bank.[1] Nor can a cashier bind the bank by a promise to one holding a personal claim against him to deposit funds to his credit to meet a check on the bank to be drawn by such creditor.[2]

BILLS, NOTES AND SECURITIES. It is beyond the scope of the authority of a cashier to accept a verbal assignment of an interest in a note previously assigned to another bank as collateral security in payment of another note.[3] So also it is beyond his authority to make an executory verbal agreement, without consideration, to take in payment of a note due the bank an interest for the same amount in a note upon a third party which was never assigned to the bank.[4] Without special authorization, which must be shown by one claiming it, the cashier cannot, in payment of the debt of another to the bank, accept the note of a company executed by the cashier as officer of it and bearing his personal endorsement as security.[5] Nor has he implied authority by virtue of his office to release without consideration one of the joint makers from his liability on a note given to the bank; and the bank is not bound when, without consideration, the cashier agrees that if one of the two makers of a partnership note pays a certain amount upon a well secured note given by the other individually to the bank such other maker would be released from all liability on the joint note sued on.[6]

A bank cashier, knowing that a partnership exists, is not guilty of negligence because he honors checks against the firm account when he knows that the money of the account so paid out was raised by discounting a personal note of one of the partners, particularly where the negotiations relative to the note and its presentment for discount were carried out by the drawer of the checks as ostensible agent for his partner, with the apparent purpose of raising partnership funds.[7]

REPRESENTATIONS. When a surety on a note given to a bank by a third person becomes surety on a renewal note, and the cashier informs him that the bank has sufficient funds of the maker to pay such renewal note, that its execution is a matter of form necessary

[1]Dowd v. Stephenson, 105-467, 10 S. E. 1101.
[2]Bank v. West, 184-220, 114 S. E. 178.
[3]Piedmont Bank v. Wilson, 124-561, 32 S. E. 889.
[4]Bank v. Wilson, 124-561, 32 S. E. 889.
[5]Grady v. Bank and Trust Co., 184-158, 113 S. E. 667.
[6]Bank v. Lennon, 170-10, 86 S. E. 715.
[7]Crutchfield v. Rowe et ux., 184-210, 114 S. E. 301.

only to keep the bank account straight, and that the bank will not hold him liable thereon, the bank is bound by such representations and promise.[1]

Wrongful acts. Where the president of a bank misappropriates funds of a correspondent bank, of which he is cashier, it does not charge such bank with knowledge of the misappropriation so as to preclude recovery of an indebtedness from the correspondent bank, since its president, in misappropriating the funds, acted independently and adversely to its interests.[2] A bank is responsible for the conduct of its cashier in having a note signed by a third person as maker, in blank amount, and in wrongfully filling in the blank for a larger sum than intended and misappropriating the surplus to his own use.[3]

Notice to officer or agent. Where an officer of a bank has a note discounted at such bank for his personal benefit, he being a member of the discount committee, the bank is charged with his knowledge of all defenses to it.[4] This might not be so if his active participation in agreeing to the discounting on the part of the bank is not necessary.[5] Where a defaulting cashier promises to place funds to defendant's credit to meet a check without defendant's giving a note or security, knowledge of conniving cashier will not be imputed to the bank.[6]

Deposits. Defined. The term "demand deposits" means all deposits the payment of which can be legally required within thirty days. The term "time deposits" means all deposits the payment of which cannot be legally required within thirty days.[7]

Right to receive. Any bank may receive deposits of funds subject to withdrawal or to be paid upon the checks of the depositor. All deposits in such banks are payable on demand, without notice, except when the contract of deposit shall otherwise provide.[8] Any State bank conducting a savings department may receive deposits on such terms as are authorized by its board of directors and agreed to by its depositors. The board of directors must prescribe the terms upon which such deposits shall be received and paid out, and a passbook must be issued to each depositor containing the rules and

[1]Bank v. Pegram, 118-671, 24 S. E. 487.
[2]Corporation Commission v. Bank, 164-357, 79 S. E. 308; same, 164-205, 80 S. E. 152; Brite v. Penny, 157-110, 114, 72 S. E. 964; Anniston Nat. Bank v. School Committee, 118-383, 24 S. E. 792; Bank v. Burgwyn, 110-267, 14 S. E. 623.
[3]Phillips v. Hensley, 175-23.
[4]Le Duc v. Moore, 111-516, 15 S. E. 888.
[5]Bank v. Burgwyn, 110-267, 14 S. E. 623.
[6]Bank v. West, 184-220, 114 S. E. 178.
[7]1921, chap. 4, sec. 1.
[8]1921, chap. 4, sec. 46.

regulations adopted by the board of directors governing such deposits, in which must be entered each deposit made, the interest allowed thereon, and each payment made to such depositor. By accepting such book the depositor assents and agrees to the rules and regulations therein contained.[1]

RELATION BETWEEN BANK AND DEPOSITOR IN GENERAL. The depositor, when and as soon as he makes a deposit, becomes a creditor of the bank, and the bank becomes his debtor for the amount of money deposited, agreeing to discharge the debt so created by honoring and paying the checks or orders the depositor may, from time to time, draw upon it, when presented, not exceeding the amount deposited. The relation of the bank and depositor is simply that of debtor and creditor, the debt to be discharged punctually, in the way just indicated. The contract between them, whether express or implied, is legal in its nature, and there is no element or quality in it different from the same in ordinary agreements or promises, founded upon a valuable consideration to pay a sum of money, specified or implied, to another party. There are none of the elements of a trust in it. The bank does not assume or become a fiduciary as to the money deposited for the depositor, nor does it agree to hold a like sum in trust for him. Hence, if the bank should fail to pay its depositor, when called upon to do so, the latter would have his remedy by proper action, just as in the ordinary case where the debtor refused to pay his creditor the debt he owed him.[2]

TITLE TO DEPOSITS. When a bank, in the course of its business, receives deposits of money in the absence of any agreement to the contrary, the money deposited with it at once becomes that of the bank, part of its general funds, impressed with no trust, and can be used by it for any purpose immediately and continuously just as it uses, or may use, its moneys otherwise acquired, which right constitutes the consideration for the bank's promise to the depositor.[3]

REPAYMENT IN GENERAL; INTEREST. Except where the contract of deposit shall otherwise provide, all deposits are payable on demand without notice,[4] such deposits being deemed general. And the depositor has no right to the particular money deposited, as in the case of a special deposit, but only a sum of money equal to that which he has deposited.[5] Where a deposit is made in certain kind of cur-

[1]1921, chap. 4, sec. 47.
[2]Hawes v. Blackwell, 107-196, 12 S. E. 245; Boyden v. Bank, 65-13.
[3]Hawes v. Blackwell, 107-196, 12 S. E. 245; Perry v. Bank, 131-117, 42 S. E. 551; Boyden v. Bank, 65-13.
[4]1921, chap. 4, sec. 46.
[5]Ruffin v. Board, 69-498; Lilly v. Board, 69-300.

rency and it is specified that it must be repaid in like currency, which is subject to fluctuation in value, and it is impossible for the bank to repay in the certain currency, the court holds that payment must be made so as to put the loss sustained by the fluctuation in value on the bank and not on the depositor.[1] A general deposit does not bear interest in the absence of a special contract.[2]

APPLICATION OF DEPOSITS TO DEBTS DUE BANK; SET-OFF OR COUNTERCLAIM; PARTNERSHIP. In the absence of an agreement to the contrary, a bank may apply deposits, other than special, to any indebtedness due it in the same right by the depositor, provided such indebtedness has matured, and if the depositor has become insolvent, whether the indebtedness has matured or not, by virtue of the right of equitable set-off.[3] And, in a suit against it for the deposit, the bank can plead the indebtedness to it as a counterclaim as a bill or action in the nature of a *fi. fa.*[4] It is only where the depositor stands in the same relation to the bank as the debtor, and deposits funds that belong to him and held by him in the same right as the debtor, that the bank has the right to appropriate and apply the deposits to the payment of a debt due to it. There must be a mutuality between the debt and the fund deposited.[5] If a dealer with a bank has a balance to his credit on a general account, and dies indebted to the bank on a judgment and also on a simple contract, the bank may, independently of the statute of set-off, apply such balance to whichever debt it may see fit.[6]

A partnership is not liable for the debts of its members, and a bank has no right to apply deposits standing in the name of the firm in payment of the individual indebtedness of any of its members;[7] nor can the bank apply individual deposits of a partner to the indebtedness of the firm to the bank.[8] But these strict applications of the principle of set-off, as it prevails at law, may be and are properly modified when by reason of the insolvency of the parties the question has been reduced as a matter of fact to one of mutual indebtedness between the bank and the claimant, and it is necessary to allow an appropriation of the debt to prevent a palpable miscarriage of justice.[9] When a bank knows that a party is the only surviving partner of a firm, and that he is making deposits as such,

[1]Fort v. Bank, 61-417, 420.
[2]Boyden v. Bank, 65-13.
[3]Hodgin v. Bank, 124-540, 32 S. E. 887; Moore v. Trust Co., 178-118, 100 S. E. 269.
[4]Moore v. Trust Co., 178-118, 100 S. E. 269.
[5]Hodgin v. Bank, 125-503, 34 S. E. 709, 712.
[6]Bank v. Armstrong, 15-519.
[7]Hodgin v. Bank, 124-540, 32 S. E. 887.
[8]Hodgin v. Bank, 124-540, 32 S. E. 887; Adams v. Bank, 113-332, 18 S. E. 513.
[9]Moore v. Banking and Trust Co., 173-180, 91 S. E. 793, and cases there cited.

it has no right to apply them to the payment of a debt created by the partnership before its dissolution; nor has it the power to apply them to the payment of an individual debt of a deceased partner, evidenced by a note endorsed by the survivor, for firm debts.[1]

As to judgment creditor, judgment debtor's bank account and notes made by third persons deposited by judgment debtor to secure his notes in favor of the bank are choses in action which the bank may appropriate to claims matured against judgment debtor or as to which it has the right of equitable set-off if judgment debtor is insolvent, or otherwise according to contracts the bank may hold affecting such property.[2]

Where a bank in whose hands is a trust fund participates with the trustee in a misapplication of the fund by applying it on the debt of the trustee, the bank is liable to the *cestui que trust*.[3]

SET-OFF BY DEPOSITOR. When a bank closes its doors and commits an act of insolvency, its deposits, whether on account or certificate, at once become due, without demand or notice, and are to be set off against a depositor's debt due the bank.[4] But a depositor, when sued by a bank on a note, cannot, after the bank is declared insolvent, maintain a counterclaim for a deposit made before the bank became insolvent and after the suit was commenced.[5]

One of several endorsers on a note to a bank which, with the principal maker, becomes insolvent, is entitled to set off his deposit in the bank as against his contributive share of the note; and, in justice and equity, the receiver must adjust such share in view of the solvency *vel non* of the other endorsers.

The National Banking Act contains no express provision as to set-off in cases of insolvency of a bank. If the real debtor is unable to pay, and the receiver is compelled to resort to the endorser, who is eventually to be the loser, he has the same equitable claim to set off bills which he had at the time the bank stopped payment. But no such effect should be allowed to an endorser where he is indemnified by the real debtor, or where the latter can be compelled to pay.[6]

PAYMENT OF CHECKS GENERALLY; MINORS' DEPOSITS. A deposit in a bank creates a debt and the payment of the checks of the customer discharges such debt *pro tanto*.[7] A bank assumes the responsi-

[1]Hodgin v. Bank, 125-503, 34 S. E. 709, 712.
[2]McIntosh Grocery Co. v. Newman, 184-370, 114 S. E. 535.
[3]Bank v. Clapp, 76-482.
[4]Davis v. Industrial Mfg. Co., 114-321, 19 S. E. 371.
[5]Piedmont Bank v. Wilson, 124-561, 32 S. E. 889.
[6]Davis v. Industrial Mfg. Co., 114-321, 19 S. E. 371.
[7]Boyden v. Bank, 65-13.

bility for the erroneous payment of checks not drawn or authorized by the depositor.[1] And where a depositor sends money to the bank by another party and the bank agrees with the other party to honor checks drawn in depositor's name by him, the depositor can hold the bank liable, there being neither express nor implied authority given by the depositor to the person making the deposit to draw checks.[2]

Where a fiduciary deposits funds belonging to the trust in a bank and authorizes the beneficiary to draw on them, and, after the death of the fiduciary, he continues to draw and the bank becomes insolvent, a receiver cannot recover from the beneficiary for the benefit of the bank's creditors the funds drawn after the death of the fiduciary.[3]

If the depositor should draw his check on the bank for some part of his deposit—the debt the bank owed him—the payee, or holder of such check, could not maintain his separate action against the bank for nonpayment of the check, on presentation of the same for payment—it could not, until the bank accepted the check, or agreed to pay it. Then, and not till then, would the bank become his debtor in his sole right as against it. The check, however, in the hands of the payee thereon, or the holder thereof, would give an interest in the deposit, as against the drawer, to the amount specified in the check, subject to the right of the bank to pay all outstanding checks of the depositor, and such as he might subsequently draw, and which might be paid before it had notice of the check in question, and subject to the right of the bank to set off debts due which the depositor might owe at the time such check should be presented. The check, as to drawer thereof, is, in effect, an assignment to the holder thereof to the amount specified in the check; and under the method of civil procedure in this State, the depositor and the holder of the check might jointly maintain an action against the bank for the deposit, in case it failed to pay the same when called upon, and they might recover, subject to the rights of the bank, as above explained. And so, also, if the depositor had given his check for the *whole* of his deposit, the holder might maintain his separate action against the bank, if it refused to pay the same, subject to its rights as to checks on the deposit paid before notice of such check, and likewise subject to its rights of set-off. This is so, because the check for the whole deposit would be, in effect, an assignment of the depositor's whole debt against the bank to the holder of such check. He, being the

[1]Bank v. Thompson, 174-349, 93 S. E. 849; McKaughan v. Trust Co., 182-543, 109 S. E. 355.

[2]Goodloe v. Bank, 183-315, 111 S. E. 516.

[3]Bank v. Waddell, 100-338, 6 S. E. 414.

real owner of the deposit—the debt—might sue for it in his own name. And a holder of a check for a part of the deposit might, in some cases, have appropriate equitable relief, as against the depositor and the bank, if they should seek to impair his rights as the equitable owner, against the drawer of part of the deposit. Such check makes the holder thereof part owner of the deposit, as against the drawer, subject to the rights of the bank. The depositor agrees, in effect, by implication of law, to set apart so much of his deposit as is specified in the check for the holder thereof. As against the drawer, that much of the deposit belongs to the drawee. If, however, it turns out that the check is not paid by the bank on due presentation for payment, the holder of the check will have his remedy against the drawer. The depositor—the drawer—agrees that the check will be paid by the bank when it shall be duly presented to it for payment, and if it shall not be, then there will be a breach of the drawer's contract with the holder of the check.[1]

Whenever any person who is a minor of the age of fifteen years and upwards makes a deposit in any bank, the same must be held for the exclusive benefit and right of such minor, free from the control of all persons whatsoever, and it must be paid, together with the interest, if there be any interest thereon, to the person in whose name the deposit is made, and the receipt, check, or quittance of such minor to the said bank is a valid and sufficient release and discharge for such deposit, or any part thereof, to the bank in which said deposit was made.[2]

PAYMENT OF CHECKS OF FIDUCIARIES; LIABILITY OF BANK. If a fiduciary makes a deposit in a bank to his personal credit of checks drawn by him upon an account in his own name as fiduciary, or of checks payable to him as fiduciary, or of checks drawn by him upon an account in the name of his principal, if he is empowered to draw checks thereon, or of checks payable to his principal and endorsed by him, if he is empowered to endorse such checks, or if he otherwise makes a deposit of funds held by him as fiduciary, the bank receiving such deposit is not bound to inquire whether the fiduciary is committing thereby a breach of his obligation as fiduciary; and the bank is authorized to pay the amount of the deposit or any part thereof upon the personal check of the fiduciary without being liable to the principal, unless the bank receives the deposit or pays the check with actual knowledge that the fiduciary is committing a breach of his

[1]Hawes v. Blackwell, 107-196, 12 S. E. 245; Perry v. Bank, 131-117, 42 S. E. 551.

[2]1921, chap. 4, sec. 38.

obligation as fiduciary in making such deposit or in drawing such check, or with knowledge of such facts that its action in receiving the deposit or paying the check amounts to bad faith.[1]

If a deposit is made in a bank to the credit of a fiduciary as such, the bank is authorized to pay the amount of the deposit or any part thereof upon the check of the fiduciary, signed with the name in which such deposit is entered, without being liable to the principal, unless the bank pays the check with actual knowledge that the fiduciary is committing a breach of his obligation as fiduciary in drawing the check or with knowledge of such facts that its action in paying the check amounts to bad faith. If, however, such a check is payable to the drawee bank and is delivered to it in payment of or as security for a personal debt of the fiduciary to it, the bank is liable to the principal if the fiduciary in fact commits a breach of his obligation as fiduciary in drawing or delivering the check.[2]

If a check is drawn upon the account of his principal in a bank by a fiduciary who is empowered to draw checks upon his principal's account, the bank is authorized to pay such check without being liable to the principal, unless the bank pays the check with actual knowledge that the fiduciary is committing a breach of his obligation as fiduciary in drawing such check, or with knowledge of such facts that its action in paying the check amounts to bad faith. If, however, such a check is payable to the drawee bank and is delivered to it in payment of or as security for a personal debt of the fiduciary to it, the bank is liable to the principal if the fiduciary in fact commits a breach of his obligation as fiduciary in drawing or delivering the check.[3] Where a deposit is made in a bank in the name of two or more persons as trustees, and a check is drawn upon the trust account by any trustee or trustees authorized by the other trustee or trustees to draw checks upon the trust account, neither the payee nor other holder nor the bank is bound to inquire whether it is a breach of trust to authorize such trustee or trustees to draw checks upon the trust account, and is not liable unless the circumstances be such that the action of the payee or other holder or the bank amounts to bad faith.[4]

LIABILITY FOR NONPAYMENT THROUGH ERROR. No bank is liable to a depositor because of the nonpayment, through mistake or error, and without malice, of a check which should have been paid had the mistake or error of nonpayment not occurred, except for the actual

[1] 1923, chap. 85, sec. 9.
[2] 1923, chap. 85, sec. 7.
[3] 1923, chap. 85, sec. 8.
[4] 1923, chap. 85, sec. 10.

damage by reason of such nonpayment that the depositor proves, and in such event the liability will not exceed the amount of damage so proven.[1]

PAYMENT OF FORGED PAPER. Banks assume the responsibility for the erroneous payment of checks not drawn or authorized by the depositor.[2] But no bank is liable to a depositor for payment by it of a forged check or other order to pay money, unless within sixty days after the receipt of such voucher by the depositor he notifies the bank that such check or order so paid is forged.[3] A bank is presumed to know the signatures of its customers, and if it pays a forged check, it cannot, in the absence of negligence on the part of the depositor whose check it purports to be, charge the amount to his account.[4] When a bank accepts a forged check from another of its depositors and places it to his credit, it is considered as a payment of the check, which, without anything further appearing, cannot be withdrawn; but where such other depositor is aware of the fact of forgery, endorses the check, and it is accordingly credited to him without knowledge of such facts on the part of the bank, the bank may return the check to such depositor and rightfully charge his account therewith, without reference to any fraudulent intent on his part.[5]

OVERDRAFTS. Any officer (other than a director) or employee of a bank who permits any customer or other person to overdraw his account, or who pays any check or draft, the paying of which shall overdraw any account, unless the same shall be authorized by the board of directors or by a committee of such board authorized to act, is personally and individually liable to such bank for the amount of such overdrafts.[6]

If a cashier of a bank is personally indebted to a depositor and agrees with such depositor that if he will draw a check on the bank overdrawing his account at that time, he, the cashier, will place funds to his credit to make it good, and such depositor draws such check and the cashier fails to deposit the promised funds, but pays the check, thereby creating an overdraft, such promise of the cashier is void, being in effect an unauthorized promise to loan such amount from the bank's funds without note, security or payment of interest, and the bank can recover of the depositor the overdraft. The knowl-

[1]1921, chap. 4, sec. 38.
[2]Bank v. Thompson, 174-349, 93 S. E. 849.
[3]1921, chap. 4, sec. 33.
[4]Yarborough v. Trust Co., 142-377, 55 S. E. 296; Woodward v. Trust Co., 178-184. 100 S. E. 304.
[5]Woodward v. Trust Co., 178-184, 100 S. E. 304.
[6]1921, chap. 4, sec. 60.

edge of the conniving cashier will not be imputed to the bank. It is not required of the bank to give notice to the depositor of the overdraft, as the depositor is fixed with knowledge of the condition of his account.[1]

CERTIFICATES OF DEPOSIT. It is unlawful for any bank to issue any certificate of deposit or other negotiable instrument of its indebtedness to the holder thereof except for lawful money of the United States, checks, drafts or bills of exchange which are the actual equivalent of such money; nor is it permissible that such moneys, checks, drafts, or bills of exchange be the proceeds of any note given in payment of the purchase price of any stock. Any officer or employee of any bank issuing a certificate of deposit unlawfully is guilty of a misdemeanor, and upon conviction thereof can be fined or imprisoned, or both, in the discretion of the court.[2]

SPECIAL DEPOSITS. A special deposit is a naked bailment, and on demand of the bailor restitution must be made of the thing deposited.[3] And as the bank acquires no property in the thing deposited, and derives no benefit therefrom, it is bound only to keep the deposit with the same care that it keeps its own property of a like description.[4] A special deposit cannot be checked upon, because it does not belong to the bank. It remains the property of the depositor. And if it is lost or stolen without the negligence of the bank, it is the depositor's loss. But this is not so in case of a general deposit, or in case of a general deposit of a special fund, or of a fund for a special purpose, where the facts are known to the bank.[5]

VALUABLES DEPOSITED FOR SAFE-KEEPING. A bank has authority to act as agent or bailee of its customers for the safe-keeping of their valuable papers. It receives compensation therefor in the advantage it obtains in attracting and retaining the business of its patrons, and its liability for such deposits for safe-keeping is not that of a gratuitous bailee, responsible only for its gross negligence, but its liability is governed by the rule of the prudent man in the care of papers of such character deposited with him for hire, or commensurate with the value of the property under the particular circumstances.[6]

Collections. RELATION BETWEEN BANK AND DEPOSITOR FOR COLLECTION. It is a well-established rule that when negotiable paper

[1]Bank v. West, 184-220, 114 S. E. 178.
[2]1921, chap. 4, sec. 44.
[3]Boyden v. Bank, 65-13; State Bank v. Armstrong, 15-519; Hodgin v. Bank, 125-503, 34 S. E. 709, 712; Ruffin v. Orange, 69-498; Lilly v. Cumberland, 69-300.
[4]Boyden v. Bank, 65-13.
[5]State Bank v. Armstrong, 15-519; Hodgin v. Bank, 125-503, 34 S. E. 709, 712.
[6]Trustees v. Banking Co., 182-298, 109 S. E. 6.

is deposited with a bank for the purpose of collection, the relation of principal and agent is thereby created between the depositor and the bank.[1] And if the bank discounts its depositor's drafts under an express agreement or one implied from the course of dealings that if they are returned unpaid they shall be charged back to his account and returned to him, the bank is merely an agent for collection and not a purchaser of the paper in due course.[2] But if the depositor is in debt to the bank and a draft is discounted by it and the proceeds applied in discharge of such debt, the bank becomes the owner of the draft.[3]

TITLE TO PAPER RECEIVED FOR COLLECTION. An endorsement "for collection" of a draft or check does not transfer title to the endorsee, but merely constitutes him the agent of the endorser.[4] If the paper is collected and the proceeds mingled with the general funds of the bank, the endorser occupies the position of a simple contract creditor, with no preference over other creditors.[5] That a check deposited with a bank for collection was unrestrictedly endorsed to the bank, and credit therefor given the depositor, does not pass the title to the bank, where, on nonpayment of the check, its amount was to be charged up to the depositor, so as to prevent its recovery by the depositor from a receiver appointed for the bank.[6]

AUTHORITY AND ACTS IN MAKING COLLECTIONS; SUBAGENTS. Where a check payable in another place is deposited with a bank for collection, the duty of the bank so receiving the check in the first instance is to seasonably transmit the same to a suitable bank or other agent at the place of payment for collection, the bank so selected under such circumstances being the agent of the owner of the check. And as a part of the same doctrine it is well settled that, if the acceptor of a bill or promissory note has his residence in another place, it shall be presumed to have been intended and understood between the depositor for collection and the bank that it was to be transmitted to the place of residence of the promissor.[7] And any bank so receiving for collection or deposit any check, note, or other negotiable instrument drawn upon or payable at another bank, located in another town or city, whether within or without this State,

[1]Murchison Nat. Bank v. Dunn Oil Mills Co., 150-718, 64 S. E. 885; Runyon v. Latham, 27-551.

[2]Worth Co. v. Feed Co., 172-335, 90 S. E. 295; Latham v. Spragins, 162-404, 78 S. E. 282, and cases cited; Mangum v. Mutual Grain Co., 184-181, 114 S. E. 2.

[3]Latham v. Spragins, 162-404, 78 S. E. 282.

[4]Armour Packing Co. v. Davis, 118-548, 24 S. E. 365; Boykin v. Bank, 118-566, 24 S. E. 357.

[5]Bank v. Davis, 115-226, 20 S. E. 370; Bank v. Bank, 119-307, 25 S. E. 971.

[6]Armour Packing Co. v. Davis, 118-548, 24 S. E. 365.

[7]Bank v. Floyd, 142-187, 55 S. E. 95; Bank v. Bank, 75-534.

may forward such instrument for collection, direct to the bank on which it is drawn, or at which it is payable, and such method of forwarding direct to the payer bank is deemed due diligence, and the failure of such payer bank, because of its insolvency or other default, to account for the proceeds thereof will not render the forwarding bank liable therefor; but such forwarding bank must have used due diligence in other respects in connection with the collection of such instrument.[1] The employment of a subagent is justifiable, because this manner of conducting business is the usual and known custom, and in a business which requires or justifies the delegation of an agent's authority to a subagent, who is not his own servant, the original agent is not liable for the errors or misconduct of the subagent, if he has exercised due care in the selection.[2]

The endorsement on a draft in course of collection by corresponding bank, "All prior endorsements guaranteed," does not give the drawee bank a cause of action against the cashing bank when the name of the drawer has been forged and draft is paid by the cashing bank in good faith, and thereafter the draft is paid by the drawee bank, for the latter is presumed to know the signatures of its depositors and detect the forgery; therefore the drawee bank may not recover from the cashing bank the amount it has thus paid, upon the allegation that the latter has not acted with reasonable precaution in cashing the draft.[3]

Where the bank of deposit of the maker of a note is the one specified as the place of its payment, and also the one to which the note is sent at maturity for collection, the maker's written order on the note to the bank to pay it from his deposits is sufficient; and where the bank accepts this order and retains the note without entry on its books for some days, then its doors are closed and a receiver appointed, the payee of the note is held responsible for the acts of its agency for collection, and a plea of payment is good.[4]

A note payable at the bank of the maker's deposit is of itself an order on the bank to pay the note at maturity for the account of the maker.[5]

RIGHTS AND LIABILITIES AS TO PROCEEDS. A bank acquiring in due course of business a draft for the price of goods, with bill of lading attached, is the owner thereof, and of the proceeds on the draft being paid, but where the bank merely takes the draft and bill of lading as a collecting agent, it acquires no property right in the

[1]1921, chap. 4, sec. 39.
[2]Bank v. Floyd, 142-187, 55 S. E. 95.
[3]Bank v. Trust Co., 168-605, 85 S. E. 5.
[4]Peaslee v. Dixon, 172-411, 90 S. E. 421.
[5]Pell's Revisal, sec. 2237; C. S., 3069.

proceeds.[1] That drafts collected by a bank were for shipments of liquor does not defeat plaintiff's right to recover from the bank the amount collected, since, where an agent receives money to his principal's use, it is immaterial whether it was paid on a legal or illegal contract.[2]

It is a well known and established custom of banks, when acting as collecting agents, either for banks or indeed for any customer, to put all collections made by them into the general fund of the bank, unless directed to make of them a special deposit, and use them from hour to hour, and from day to day, in the transaction of their current business, and, when the day or the hour arrives for making remittances, to send to the bank or other customer for whom the collection was made, not the identical currency or money collected, but money or currency taken from the general fund without any reference to its identity, or, as is far oftener done, its cashier's check on itself or some other bank, or in some way to effect a transfer of the fund by the use of credits of one kind or another without the handling and shipping of any actual money or currency at all.[3]

Where a draft is sent to a bank for collection, and it is so restricted by endorsement, the bank is authorized to carry the proceeds of the draft, when collected, into its general assets; and when it does so, the relationship between the drawer or forwarder of the draft and the bank becomes that of creditor and debtor, so that, on assignment of the bank by reason of insolvency, such drawer or forwarder can only share in the assets pro rata with the general creditors.[4]

Under an agreement between two banks that one should collect notes and checks forwarded it by the other for a commission, and remit daily, the relation of principal and agent as to any paper ceased on collection and the relation of creditor and debtor as to the cash immediately arose.

A collecting bank is not chargeable as for a conversion for funds collected for a correspondent which it mingled with its own funds previous to its failure, in the absence of knowledge by its cashier of its insolvency.[5]

Where a collecting bank credits the account of the sending bank with the proceeds of a draft endorsed over to the sending bank "for collection," whose agency was afterwards revoked, it does not discharge liability to the drawer, unless the money was actually trans-

[1]Elm City Lumber Co. v. Childerhose, 167-34, 83 S. E. 22.
[2]Arey Distilling Co. v. Mutual Aid Bkg. Co., 163-66, 79 S. E. 287.
[3]Bank v. Davis, 114-343, 19 S. E. 280.
[4]Corporation Comm. v. Bank, 137-697, 50 S. E. 308; Bank v. Davis, 115-226, 20 S. E. 370.
[5]Bank v. Davis, 114-343, 19 S. E. 280.

mitted to the sending bank before notice of the revocation of its agency.[1] Wherever it appears on the face of a paper that it was in the possession of a bank for collection, the proceeds of the paper are the property of the owner, and the actual collecting bank is liable to the owner in case of the insolvency of any intermediary bank which has received it for collection, unless the collecting bank has remitted the proceeds, or its equivalent, to the transmitting bank before it had knowledge of such transmitting bank's insolvency.[2]

Where one bank, as the agent of a customer, sends a draft for collection to another bank between which and the former the business arrangement is that each shall daily remit for the items sent by and collected for the other, the collecting bank is not a purchaser for value by reason of the fact that it has a balance against the forwarding bank, and has no right, as against the owner of the paper, to apply the proceeds to the credit of the account of the forwarding bank, especially when, before the paper is collected, the latter bank fails and suspends business.[3]

RIGHT TO COMPENSATION. All banks and trust companies in this State have authority to charge a fee on remittances covering checks of not in excess of one-eighth of one per cent, the minimum fee being ten cents. But this provision does not apply to checks drawn in payment of obligations due the State or Federal Government.[4]

PAYMENT BY DRAWEE BANK. Whenever a check is presented to the drawee bank for payment by or through any Federal Reserve Bank, postoffice or express company, or any respective agents thereof, unless specified on the face thereof to the contrary by the maker or makers thereof, such check is payable at the option of the drawee bank, in exchange drawn on the reserve deposits of said drawee bank.[5] This does not apply, however, to checks drawn in payment of obligations due the State or Federal Government.[6]

CERTAIN NOTATIONS ON CHECKS PROHIBITED. It is declared unlawful for any person or persons, other than the maker thereof, to make, by rubber stamp or otherwise, any notation on any check drawn on any bank or trust company chartered in this State, the effect of which notation shall change or affect any condition or provision thereof, as created by law, with reference to the amount to

[1]Boykin, etc., Co., v. Bank, 118-566, 24 S. E. 357; Bank v. Bank, 119-307, 25 S. E. 971.
[2]Bank v. Bank, 119-307, 25 S. E. 971; Boykin v. Bank, 118-566, 24 S. E. 357.
[3]Stevenson v. Bank, 113-485.
[4]1921, chap. 20, secs. 1, 4.
[5]1921, chap. 20, sec. 2.
[6]1921, chap. 20, sec. 4.

be charged for its collection, how remittance for it is to be made by drawee to collecting bank, and its protest when based alone on the ground of refusal to pay exchange or collection charges. Any person or persons violating this provision is guilty of a misdemeanor, and upon conviction must pay a fine of not more than two hundred dollars or be imprisoned not more than thirty days.[1]

FAILURE TO COLLECT. A bank must use due diligence to collect, else its failure to collect when paper is presented may subject it to liability for the amount of it.[2] When commercial paper is sent to a bank for collection, it is the duty of the bank to make presentment for payment at maturity. If it is not then paid, the bank must fix the liability of the drawer by protest and notice of dishonor; and if it fails in any of these duties it becomes liable in damages. It is no excuse that if the paper had been presented for payment it would not have been paid. The failure of the bank to present for acceptance and payment makes the paper its own; and it is liable for the amount thereof.[3]

Where a bank receives a check on itself from a depositor for collection, and fails without excuse to notify such depositor of its nonpayment, it is chargeable with negligence.[4]

FAILURE TO FIX LIABILITY. Where a bank receiving paper for collection unreasonably delays in fixing liability, the bank will be chargeable with the amount of the payment.[5]

REFUSING PAYMENT WHEN REFUSAL TO PAY EXCHANGE; NO PROTEST ALLOWED. No officer in this State is allowed to protest for nonpayment any check or checks drawn on any bank or trust company chartered by this State when payment is refused by the drawee bank solely on account of failure or refusal of the holder or owner thereof to pay exchange charges authorized; and there is no right of action, either in law or equity, against any bank or trust company chartered by this State, for refusal to pay any such check when such action is based alone on the ground of refusal to pay exchange or collection charges herein authorized.[6]

Loans and discounts. POWERS AND RESTRICTIONS. The charter of the bank, when it attempts to state to what classes of people loans can be made, is controlling. It has been held that where the charter

[1]1921, chap. 20, sec. 3.
[2]Bank v. Greensboro Loan and Trust Co., 159-85, 74 S. E. 747.
[3]Bank v. Greensboro Loan, etc., Co., 159-85, 74 S. E. 747.
[4]Bank v. Kenan, 76-340.
[5]Bank v. Kenan, 76-340.
[6]1921, chap. 20, sec. 5.

authorized loans to any "planter, farmer, miner, manufacturer, or other person," it did not authorize loans to merchants, as it was the evident intent of the Legislature to benefit only the producing class.[1] Nor can any State bank lend to an officer who is actively engaged in its management, or to any of its employees, any amount whatever, except upon good collateral or other ample security or endorsement, and no such loan can be made until after it has been approved by a majority of the directors or a committee of the board of directors authorized to act.[2]

When the reserve of any bank falls below the amount required by law, it cannot make new loans or discounts otherwise than by discounting or purchasing bills of exchange, payable at sight or on demand, nor make dividends of its profits until the reserve required by law is restored. The Corporation Commission must require any bank whose reserve falls below the amount herein required immediately to make good such reserve. In case the bank fails for thirty days thereafter to make good its reserve, the Corporation Commission may forthwith take possession of the property and business of such bank until its affairs be adjusted or finally liquidated as provided for by law.[3]

COLLATERAL SECURITY. State banks can make loans on any good collateral that is marketable, but it is unlawful for any bank to make any loan secured by the pledge of its own shares of stock, nor can any bank be the holder as pledgee, or as purchaser, of any portion of its capital stock unless such stock is purchased or pledged to it to prevent loss upon a debt previously contracted in good faith.[4]

Where a bank charter stated that "advancements may be made," etc., "taking liens," it is held that the charter contemplated that the two should be contemporaneous acts, and not that the bank, at any time after making an advancement, could take a lien on all future purchases of the mortgagor for a general balance due on such advancements.[5]

INTEREST; RATES OF DISCOUNT; USURY. The legal rate of interest is six per cent and no more.[6] All bonds, bills, notes, and bills of exchange bear interest from the maturity thereof unless otherwise specified. All such payable on demand bear interest from the date demandable unless otherwise specified. Bills of exchange drawn or endorsed in this State and which have been protested bear interest,

[1]Bank v. Williams, etc., Co., 79-129.
[2]1921, chap. 4, sec. 62.
[3]1921, chap 4, sec. 71.
[4]1921, chap. 4, sec. 45.
[5]Bank v. Williams, etc., Co., 79-129.
[6]C. S., 2305.

not from the date thereof, but from the time of payment therein mentioned.[1] The provision in a bank charter that it can "lend money upon such terms and rates of interest as may be agreed upon" does not authorize such bank to charge more than the legal rate.[2] The taking, receiving, reserving or charging a greater rate of interest than six per cent per annum, either before or after the interest may accrue, when knowingly done, works a forfeiture of the entire interest which the note or other evidence of debt carries with it, or which has been agreed to be paid thereon. And in case a greater rate of interest has been paid, the person, or his legal representatives, or corporation by whom it has been paid may recover back twice the amount of interest paid.[3] A note tainted with usury retains the taint in the hands of a subsequent holder;[4] therefore, a note embracing usurious stipulation is void as against the maker in the hands of a purchaser before maturity for value and without notice to the extent to which the contract is usurious.[5] A provision in a charter allowing a bank to lend money at a usurious rate does not confer power upon it to do so, but a provision to borrow money at such rate is not objectionable.[6] The custom of merchants will not be allowed to modify the usury laws.[7] An agreement to pay interest on a note "at the rate of six per cent per annum, to be compounded annually," renders a contract usurious,[8] but interest upon interest due at a specified time and unpaid is not usury.[9]

BANK ACCEPTANCES. Any State bank may accept for payment at a future date drafts or bills of exchange having not more than six months sight to run, drawn upon it by its customers under acceptance agreements, and which grow out of transactions involving the importation or exportation of goods, and issue letters of credit authorizing the holders thereof to draw upon it or its correspondents, provided that there is a definite *bona fide* contract for the shipment of goods within a specified reasonable time, and the existence of such contract is certified in the acceptance agreement, or which grow out of transactions involving the domestic shipment of goods, provided that shipping documents, conveying or securing to the accepting bank title to readily marketable goods, are attached or in the hands of an agent of the accepting bank, independent of the drawer, for his account, at the time of acceptance, or which are secured at the time

[1] C. S., 2307.
[2] Simonton v. Lanier, 71-498.
[3] C. S., sec. 2306.
[4] Faison v. Grandy, 126-827.
[5] Ward v. Sugg, 113-489, 18 S. E. 717, overruling Coor v. Spicer, 65-401.
[6] Bank v. Mfg. Co., 96-298.
[7] Gore v. Lewis, 109-539, 13 S. E. 909.
[8] Cox v. Brookshire, 76-314.
[9] Crowell v. Jones, 167-386, 83 S. E. 551; Scott v. Fisher, 110-311, 14 S. E. 799.

of acceptance by warehouse receipts or other documents conveying or securing to the accepting bank title to readily marketable goods fully covered by insurance, the warehouse receipts or other documents to be those of a responsible warehouse, independent of the drawer, the acceptance to remain secured during the life of the acceptance unless suitable security of same character, or cash, be substituted. No State bank, however, can accept drafts or bills of exchange to an aggregate amount at any time more than equal to the sum of its capital and permanent surplus. Nor can a bank accept, whether in a foreign or domestic transaction, for any one person, firm, or corporation, to any amount at any time equal to more than twenty-five per cent of its capital and permanent surplus, unless the accepting bank is secured either by attached documents or those held by its account by its agent, independent of the drawer, or by some other actual security of the same character. Should the accepting bank purchase or discount its own acceptances, such acceptances will be considered as a direct loan to the drawer, and be subject to the limitation on loans heretofore stated. The Corporation Commission may issue such further regulations as to such acceptances as it may deem necessary in conformity with law. As used herein, the word "goods" must be construed to mean and include goods, wares, merchandise, or agricultural products, including livestock.[1]

REPAYMENT OF LOANS. A borrower cannot take advantage of a cashier's mistake in cancelling his note, and claim that his loan has been paid. A case in point is where a borrower gave to the lender bank a draft in payment of his note, with the understanding that when the draft was collected the note would be canceled. The cashier, through error, canceled the note and sent it to the borrower. The draft went to protest. The court held that there was no payment of the note.[2]

[1]1921, chap. 6, sec. 37.

[2]Dewey v. Bowers, 26-538.

AN ACT TO PROVIDE FOR THE SUPERVISION AND EXAMINATION OF INDUSTRIAL BANKS BY THE CORPORATION COMMISSION.

(This act is designated as Chapter 225 of the Laws of 1923. Up to this date none of its provisions have been construed by the Supreme Court.)

SECTION 1. **Industrial bank defined.** The term "Industrial Bank," as used in this act, shall be construed to mean any corporation organized or which may hereafter be organized under the general corporation laws of this State, which is engaged in lending money to be repaid in weekly or monthly or other periodical installments, or principal sums, as a business: *Provided, however,* this definition shall not be construed to include building and loan associations or commercial or savings banks.

SEC. 2. **Manner of organization.** Corporations may be organized under this act in the same manner as provided for corporations authorized under the chapter on Corporations.

SEC. 3. **Corporate title.** Every corporation incorporated or reorganized pursuant to the provisions of this act shall be known as an industrial bank, and may use the word "bank" as part of its corporate title.

SEC. 4. **Capital stock.** The amount of capital stock with which any industrial bank shall commence business shall not be less than twenty-five thousand dollars ($25,000) in cities or towns of fifteen thousand population or less; nor less than fifty thousand dollars ($50,000) in cities or towns whose population exceeds fifteen thousand but does not exceed twenty-five thousand; nor less than one hundred thousand dollars ($100,000) in cities or towns whose population exceeds twenty-five thousand; the population to be ascertained by the last preceding National census: *Provided,* that this section shall not apply to industrial banks organized and doing business prior to its adoption.

SEC. 5. **No commissions for sale of stock.** The capital stock sold by any industrial bank in process of organization, or for an increase of the capital stock, shall be accounted for to the bank in the full amount paid for the same. No commission or fee shall be

paid to any person, association, or corporation for selling such stock. The Corporation Commission shall refuse authority to commence business to any industrial bank if commissions or fees have been paid, or have been contracted to be paid by it, or by any one in its behalf, to any person, association, or corporation for securing subscriptions for or selling stock in such bank.

SEC. 6. **Powers.** In addition to the general powers conferred upon corporations formed under the chapter on Corporations, every industrial bank shall have the following powers:

1. To loan money on real or personal security, and reserve lawful interest in advance upon such loans, and to discount or purchase notes, bills of exchange, acceptances or other choses in action.

2. To sell or offer for sale its secured or unsecured evidences or certificates of indebtedness or investment, and to receive from investors therein or purchasers thereof payments therefor in installments or otherwise, with or without an allowance of interest upon such payments, whether such evidence or certificates of indebtedness or of investment be hypothecated for a loan or not, and to enter into contracts in the nature of a pledge or otherwise with such investors or purchasers with regard to such evidences or certificates of indebtedness or of investment, and no such transaction shall in any way be construed to affect the rate of interest on such loans.

3. To charge for a loan made pursuant to this section one dollar for each fifty dollars or a fraction thereof loaned, up to and including loans of two hundred and fifty dollars, and for loans in excess of two hundred and fifty dollars, one dollar for each two hundred and fifty dollars excess or fraction thereof, to cover expenses, including any examination or investigation of the character and circumstances of the borrower, comaker, or surety. An additional fee of five dollars may be charged on such loans where same are secured by mortgage on real estate. No charge shall be collected unless a loan shall have been made.

4. To establish branch offices or places of business within the county in which its principal office is located, and elsewhere in the State, after having first obtained the written approval of the Corporation Commission, which approval may be given or withheld by the Corporation Commission in its discretion: *Provided,* that the Corporation Commission shall not authorize the establishment of any branch the paid-in capital of whose parent bank is not sufficient in an amount to provide for the capital of at least twenty-five thousand

dollars ($25,000) for the parent bank and at least twenty-five thousand dollars ($25,000) for each branch which it is proposed to be established in cities or towns of fifteen thousand population or less; nor less than fifty thousand dollars ($50,000) in cities or towns whose population exceeds fifteen thousand but does not exceed twenty-five thousand; nor less than one hundred thousand dollars ($100,000) in towns whose population exceeds twenty-five thousand.

SEC. 7. **Restriction on powers.** No industrial bank shall—

1. Make any loan under the provisions of this article for a longer period than one year from the date thereof: *Provided, however,* that loans upon real estate security may be made for a period not exceeding two years.

2. Deposit any of its funds in any banking corporation unless such corporation has been designated as such depositary by a vote of a majority of the directors, or of the executive committee, exclusive of any director who is an officer, director, or trustee of the depositary so designated, present at any meeting duly called at which a quorum is in attendance, and approved by the Corporation Commission.

SEC. 8. **Limit of loans.** The total liability to any industrial bank of any person, corporation, company or firm, for money borrowed, including in the liabilities of the company or firm the liabilities of the several members thereof, shall at no time exceed ten per cent of the actually paid-up capital and surplus of such industrial bank, but the discount of *bona fide* bills of exchange or acceptances drawn against actually existing values, and the discount of commercial or business paper actually owned by the person or persons, corporation, company or firm negotiating the same shall not be considered money so borrowed.

SEC. 9. **Directors.** At least three-fourths of the number of directors of any industrial bank shall be residents of the State of North Carolina.

SEC. 10. **Officers and employees shall give bond.** The active officers and employees of any industrial bank, before entering upon their duties, shall give bond to the bank in a bonding company authorized to do business in North Carolina in the amount to be required by the directors, and in such form as may be prescribed or approved by the Corporation Commission. The Corporation Commission, or directors of such bank, may require an increase of the amount of such bond whenever they may deem it necessary. If in-

jured by the breach of any bond given hereunder, the bank so injured may put the same in suit and recover such damage as it may have sustained.

SEC. 11. **Supervision and examination.** Every industrial bank now or hereafter transacting the business of an industrial bank, as defined by this act, whether as a separate business or in connection with any other business under the laws of and within this State, shall be subject to the provisions of this act, and shall be under the supervision of the Corporation Commission. The Corporation Commission shall exercise control of and supervision over the industrial banks doing business under this act, and it shall be its duty to execute and enforce, through the Chief State Bank Examiner and the State bank examiners and such other agents as are now or may hereafter be created or appointed, all laws which are now or may hereafter be enacted relating to industrial banks as defined in this act. For the more complete and thorough enforcement of the provisions of this act the Corporation Commission is hereby empowered to promulgate such rules, regulations and instructions, not inconsistent with the provisions of this act, as may, in its opinion, be necessary to carry out the provisions of the laws relating to industrial banks as herein defined, and as may be further necessary to insure such safe and conservative management of industrial banks under its supervision as may provide adequate protection for the interest of creditors, stockholders, and the public in their relations with such institutions. All industrial banks doing business under the provisions of this act shall conduct their business in a manner consistent with all laws relating to industrial banks, and all rules, regulations and instructions that may be promulgated or issued by the Corporation Commission.

SEC. 12. **Corporation Commission may take charge, when.** The Corporation Commission may forthwith take possession of the business and property of any industrial bank to which this act is applicable whenever it shall appear that such industrial bank:

1. Has violated its charter or any laws applicable thereto;
2. Is conducting its business in an unauthorized or unsafe manner;
3. Is in an unsafe or unusual condition to transact its business;
4. Has an impairment of its capital stock;
5. Has refused to pay its holders of certificates of indebtedness or investment in accordance with the terms upon which such certificates of indebtedness or investment were sold;

6. Has become otherwise insolvent;

7. Has neglected or refused to comply with the terms of a duly issued lawful order of the Corporation Commission;

8. Has refused, upon proper demand, to submit its records, affairs, and concerns for inspection and examination to a duly appointed or authorized examiner of the Corporation Commission;

9. Its officers have refused to be examined upon oath regarding its affairs.

Such banks may, with the consent of the Corporation Commission, resume business upon such terms and conditions as may be approved by it.

SEC. 13. **Sections of general banking act apply.** That sections seven, eight, nine, sixty-four, sixty-six, sixty-seven, sixty-nine, seventy-two, seventy-three, seventy-four, seventy-five, seventy-six, seventy-seven, seventy-eight, seventy-nine, and eighty, of chapter four of the Public Laws of North Carolina of one thousand nine hundred twenty-one, relating to the supervision and examination of commercial banks, shall be construed to be applicable to industrial banks, in so far as they are not inconsistent with the provisions of this act.

SEC. 14. **Directors, officers, etc., accepting fees, etc.** No gift, fee, commission, or brokerage charge shall be received, directly or indirectly, by any officer, director, or employee of any industrial bank doing business under this act, on account of any transaction to which such industrial bank is a party. Any officer, director, employee, or agent who shall violate the provisions of this section shall be guilty of a misdemeanor and shall be and thereafter remain ineligible as an officer, director, or employee of any industrial bank doing business under this act. Nothing in this section shall be construed to prevent the payment of necessary and proper attorney's fees to any licensed attorney for professional services rendered.

SEC. 15. **Conflicting laws repealed.** That all laws and clauses of laws in conflict with this act and the provisions of this act be and the same are hereby repealed.

SEC. 16. **In force, when.** This act shall be in force from and after its ratification.

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